



**In re Estate of Joseph Kipkosgei Terer (Succession Cause
369 of 2014) [2025] KEHC 10507 (KLR) (18 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10507 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 369 OF 2014
JRA WANANDA, J
JULY 18, 2025
IN THE MATTER OF THE ESTATE OF JOSEPH KIPKOGEI TERER**

BETWEEN

JAMES KIPKOECH KOSGEI ADMINISTRATOR

AND

PETER KIPROTICH KOSGEI ADMINISTRATOR

RULING

1. The deceased, Joseph Kipsogei Kosgei died on 21/07/2008. On 3/10/2014, the two parties herein, as his sons, through Messrs Kigen & Co. Advocates, petitioned for Grant of Letters of Administration Intestate in respect to his estate. 11 survivors were listed in total and the property, Kapsaret/Simat Block 2(Kabeiyyot)/39 said to measure 4.1 Hectares was listed as the only property comprising the estate. The Grant of Letters of Administration was then granted to the two parties herein on 31/12/2014 as joint Administrators, and which was subsequently confirmed and the Certificate of Confirmation issued on 13/03/2018. The property was distributed amongst 6 declared beneficiaries.
2. Subsequently, the Administrators filed the Application dated 9/04/2021 seeking amendment of the Certificate of Confirmation of Grant to include as beneficiaries, some alleged purchasers of portions of the suit land. I dismissed this Application for want of prosecution on 5/02/2024 when no party attended Court and I closed the file but reinstated it on 13/02/2024 on the Administrators' Application. Before the Application could be heard, the firm of Kigen & Co. filed an Application seeking to cease acting, citing lack of co-operation from the clients (Administrators). Before that Application, too, could be heard, Messrs Isiaho Sawe & Co. Advocates came on record, but only for the 1st Administrator, James Kipkoech Kosgei. At the same time, being satisfied that the 2nd Administrator had been served with the Application to cease acting filed by the firm of Kigen & Co., there being a Return of Service, I allowed the Application, and thereby released the said firm from acting in these proceedings.



3. Once on record, the firm of Isiaho Sawe & Co. seems to have abandoned the Application dated 9/04/2021 filed by its predecessors and which was pending for hearing, since the new Advocates filed their own fresh Application which is now the subject of this Ruling. The Application is the Summons for Rectification of Grant dated 03/02/2025 and seeks orders as follows:
 - i. That this Honourable Court be pleased to rectify, review, vary and/or amend the Grant of Letters of Administration dated 31st December, 2014 and its subsequent Certificate of Confirmation of Grant issued on 14th March, 2018 by removing the name of the 2nd Administrator herein, Peter Kiprotich Kosgei.
 - ii. That upon the grant of prayer 1 above, the Certificate of confirmation of Grant be further rectified by incorporating the names of Purchasers and change of the beneficiaries' entitlements upon the sale of their respective shares either in whole or in part.
 - iii. That the County Surveyor, Uasin Gishu be authorized to demarcate the shares of the beneficiaries in prayer (2) above as envisaged by the amendments.
 - iv. That the costs of this application be in the cause.
4. I note that Prayer 2 above is clearly the same prayer that was made in the now seemingly abandoned Application dated 9/04/2021 filed by the previous Advocates. Both seek "amendment" of the Certificate of Confirmation of Grant by including the alleged purchasers.
5. Be that as it may, the 1st Administrator, in his Affidavit in support of the fresh Application, deponed that together with his siblings, they consented to he and the 2nd Administrator, being sons of the deceased, petitioning this Court for Grant of Letters of Administration intestate on their behalf, which they did, and upon which the Grant issued to them as aforesaid. He deponed that they dutifully prosecuted the proceedings until the confirmation stage when all the beneficiaries were allocated their shares by consent. He deponed that most of the beneficiaries sold whole or portions of their shares to third parties and he gave a list of 15 purchasers and particulars of the acreage they purchased. He then also separately listed 6 purchasers and their acreages whom, he prayed, ought to be included in the Certificate of Confirmation of Grant. He urged further that however, since the transactions were entered into, the 2nd Administrator has rendered the conclusion of this matter impossible by failing to execute the transfer forms.
6. On 13/03/2025 when the matter came up for directions, Mr. Ayieko Advocate attended Court and verbally informed the Court that he had been instructed by the 2nd Administrator to come on record on his behalf. Upon Mr. Ayieko's request, I granted him 14 days to formalize his appointment and to file a Response to the Application. To date however, no such Notice of Appointment or Response has been filed for or on behalf of the 2nd Administrator.
7. Weighing the issue of the 2nd Administrator's representation, Mr. Ayieko, being an Officer of the Court, I have no reason to doubt that indeed he was instructed by the 2nd Administrator to attend Court. I therefore have no reason to doubt that the 2nd Administrator was aware of the Application but chose not to respond to it. I will therefore treat the Application as unopposed.

Determination

8. The issue arising herein for determination is evidently "whether this Court should review, vary and/or amend the Grant of Letters of Administration, and the Certificate of Confirmation of Grant issued herein, by removing the 2nd Administrator, and also by altering the schedule of distribution".



9. The main stipulated manner and/or procedure of amending, altering, or varying the contents of Grants of Letters of Administration or Certificates of Confirmation of Grant is by way of Rectification, or Revocation/annulment and in some instances, by way of Review. The choice of each procedure to be invoked is based on the nature of the changes or variations sought.
10. Rectification of Grant is governed by Section 74 of the [Law of Succession Act](#), and Rule 43 of the [Probate and Administration Rules](#), and is applicable where the alterations sought are simple and basically, in respect to errors in names or descriptions, such as typographical mistakes.
11. On its part, Revocation or annulment of Grants is governed by Section 76 of the [Law of Succession Act](#), and applies where there are substantives issues or disputes involved and affecting the existence or legitimacy of the issued Grant. There are 3 major instances that may necessitate such an Application. The first is where the process of obtaining the Grant was defective, or the person to whom the Grant was issued was not the proper person, or the process was marred by fraud or misrepresentation or concealment of facts. The second ground is where the Administrator, after obtaining the Grant, fails to discharge his duties within the stipulated timelines. The third is where the Grant has become useless and inoperative due to circumstances such as where a sole Administrator has died or has become incapacitated in one way or another, thus rendering the estate with no Administrator or with one who is unable to discharge his duties.
12. Review, on the other hand, is governed by Rule 63(1) of the Probate and Administration Rules, which specifies the limited provisions of the [Civil Procedure Rules](#) that are imported to the [Law of Succession Act](#), and which includes Order 45 of the Civil Procedure Rules relating to Review. Order 45 provides for 3 circumstances under which an order for review can be made. The first one is where the Applicant demonstrates that there has been discovery of new and important matter or evidence. The second is where there has been a mistake or error apparent on the face of the record, and the third is “for any other sufficient reason”.
13. In this case, the 1st Administrator has come to Court under the provisions of Section 47 of the [Law of Succession Act](#), and Rules 63 and 73 of the Probate and Administration Rules.
14. Section 47 of the [Law of Succession Act](#) provides as follows:

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
15. Rule 63 (1) of the [Probate and Administration Rules](#) provides as follows:

“Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the [Civil Procedure Rules](#), namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), together with the [High Court \(Practice and Procedure\) Rules](#) (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.
16. On its part, Rule 73 of the [Probate and Administration Rules](#) provides that:

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”



17. It is therefore clear that Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration, are in respect to the High Court’s inherent powers. Rule 63 on the other hand, is in respect to the powers of Review as provided under Order 45 of the *Civil Procedure Rules*.
18. The instant Application, seeks the removal of the 2nd Administrator, and secondly, incorporation of the names of purchasers. The “removal” of the name of an Administrator is not merely a change in description or a correction of an error, it is essentially the complete removal of the Administrator. It is now agreed that the removal of an Administrator is more or less similar to the Revocation of the Grant, and ought to therefore require the consent of the beneficiaries who consented to his appointment in the first place. The removal of an Administrator amounts to revoking his appointment which is governed by Section 76 of the *Law of Succession Act*, which has not been invoked herein.
19. The prayer for re-distribution of the shares, too, will, no doubt, substantially interfere with the core of the mode of distribution already concluded herein in the year 2018, more than 7 years ago. In respect to such far-reaching changes, I cite the decision of Ali-Aroni J (as she then was), made in the case of *In Re estate of George Ragui Karanja (Deceased)* [2016] eKLR, in which she stated as follows:
- “..... Redistribution amounts to a revision of the orders made by the court at the confirmation of grant. Such orders should be disturbed only through appeal or review or by the consent of the parties.”
20. Similarly, W. Musyoka J, in the case of *In re estate of Charles Kibe Karanja (deceased)* [2015] eKLR held that:
- “If a party wishes to have the assets of the estate redistributed or there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would not be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be affected without touching the orders made by the Court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant”
21. In light of all the above, my view is that the nature of alterations sought by the 1st Administrator herein, if granted, will bring about unilateral substantial changes to the Grant as it would, without the approval of the signatories to the already adopted consent and/or the affected parties, fundamentally vary the mode of distribution already adopted. That cannot be done without involving other beneficiaries.
22. Faced with a similar situation in the case of *re Estate of Stephen Chege Kimari (Deceased)* [2016] eKLR, W. Musyoka J, held as follows:
- “5. The application seeks removal of an administrator. The process of removal is akin to that of appointment. The consents of all concerned must be obtained, particularly if they rank equal or higher to the applicant in terms of entitlement to appointment. From the certificate of confirmation of grant, I have counted ten (10) survivors. None of them has filed any papers in support of the application.”
23. In this matter, there is no evidence that the other beneficiaries have been served with the Application or that they are even aware of its existence. Although it is alleged that it is they who have sold their



portions and would thus wish that the distribution of shares be amended, the Court is not privy to that arrangement.

24. Beneficiaries of estates and also Administrators are also cautioned that once a Court completes the distribution of an estate, the next step and which ought to be concluded within 6 months thereafter, is for transmission of the distributed shares to the respective beneficiaries. It is after such transmission that the beneficiaries, after being registered as owners of the respective properties and obtained titles, are then free to dispose of the same to third parties. The beauty of this situation is that such beneficiary does not need to again involve the Succession Court in disposal of the property. It is therefore only after transmission of shares that beneficiaries should, if they so wish, sell their transmitted portions to purchasers.
25. The practice of disposing of inherited properties, particularly parcels of land, before transmission has been completed then returning to “bother” the Succession Court for amendment of the Certificates of Confirmation of Grant to amend the schedule of distribution to include purchasers, is wrong and technically, unlawful. Purchasers should also learn that any sale of land should always be supported by proof of a document of title in the name of the vendor, duly issued by the Lands Office. A Certificate of Confirmation of Grant is not by itself a document of title capable of confirming or transferring ownership of land, and does not by itself prove a vendor’s right to dispose of a property to a third party. The Succession Court, for all intents and purposes, becomes technically functus officio once it has distributed the estate. Unfortunately, Advocates, who should know better and advise their clients, are complicit in knowingly participating in such irregular dealings. Any fresh dealings between beneficiaries and purchasers after confirmation of a Grant, even before transmission, and/or any disputes arising thereafter are ideally matters that should be placed before the Environment and Land Court (ELC).
26. I would have dismissed the Application on the above grounds but noting that this is matter which the Court had already long distributed the estate and concluded its duty, and that what is being sought is a subsequent review, dismissing the Application will not be of any benefit to the beneficiaries and might only convolute the proceedings and add costs since the Application is likely to still be brought back in a different form. For these reasons, I will not dismiss it at this stage. I will however only consider entertaining the prayer for removal of the co-Administrator after the 1st Administrator complies with the directions that I shall give hereunder.
27. Regarding the prayer re-distribution of the shares to include third party purchasers, I will only consider entertaining it if it is demonstrated that there is mutual consent amongst the beneficiaries in respect to it. Should there be substantive disputes over the alleged purchases by third parties, then, unless proper grounds recognized in law are demonstrated, I may have to ask the purchasers to pursue their claims at the correct forum, the Environment and Lands Court (ELC).
28. In the premises, I order as follows:
 - i. That the 1st Administrator shall serve the beneficiaries of the estate herein, as listed in the Certificate of Confirmation of Grant dated 13/03/2018, inviting them to attend Court on a date to be fixed, for purposes of the Court receiving or confirming their consents to the Application dated 3/02/2025. A Return of Service shall accordingly be filed.
 - ii. That the purchasers are also at liberty to attend Court on the said date and for this purpose, the 1st Administrator, shall also effect service upon them and file a Return of Service.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 18TH DAY OF JULY 2025

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WANANDA J. R. ANURO

JUDGE

Delivered in the presence of:

Ms. Isiaho for the 1st Administrator

N/A for Administrator

Court Assistant: Brian Kimathi

