



In re Estate of the Late Kipkoech Kisache (Deceased) (Civil Appeal E045 of 2025) [2025] KEHC 10400 (KLR) (17 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10400 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CIVIL APPEAL E045 OF 2025**

JK SERGON, J

JULY 17, 2025

**IN THE MATTER OF THE ESTATE OF THE LATE KIPKOECH
KISACHE (DECEASED)**

BETWEEN

ELIZABETH CHEPKEMOI WILLY APPLICANT

AND

MARY KISACHE BENEFICIARY

RULING

1. The application coming up for determination is a notice of motion dated 4th May, 2025 seeking the following orders;
 - (i) Spent
 - (ii) Spent
 - (iii) Spent
 - (iv) Pending the hearing and determination of the Appeal, the Honourable Court be pleased to stay the execution and implementation of the orders made in the Ruling of 11th April 2025 and the Rectified Certificate of Confirmation of Grant dated 12th September, 2024.
 - (v) The Honourable Court be pleased to issue such other or further orders as may be necessary for the preservation of the estate and protection of the Appellants' interests.
 - (vi) Costs of this Application be provided for.



2. The application is supported by the grounds on the face of it Elizabeth Chepkemoi Willy and the supporting affidavit of the appellant herein and a beneficiary of the Estate of the late Kipkoech Kisache (deceased).
3. She avers that a valid Certificate of Confirmation of Grant was issued on 30th May 2023 distributing the estate equitably among beneficiaries and that on 4th June 2024, the trial court revoked a second grant dated 7th August 2023 due to irregularity and lack of consent.
4. She avers that without any formal application, summons, or hearing, a purported rectified grant was issued on 12th September 2024 reinstating the distribution terms of the revoked grant and that the said rectified grant drastically altered her confirmed share in the estate, reducing it by half, without her knowledge, consent, or hearing.
5. She avers that she filed an application to revoke the rectified grant, which was dismissed by the Honourable Court on 11th April 2025 and that the ruling delivered on 11th April 2025, which dismissed the application challenging the rectified grant which forms the subject of the present appeal.
6. She avers that although the trial court referenced a prior consent, she maintains that the said consent was on the basis of the revoked grant dated 7th August 2023. Upon its revocation on 4th June 2024, the consent was extinguished and could not lawfully support any subsequent rectification. No fresh consent, application, or endorsement was ever made or served upon her or the other Appellants to warrant the issuance of the rectified grant dated 12th September, 2024.
7. She avers that the ruling dated 11th April, 2025 arose from her application seeking revocation of the rectified grant, which was issued without any formal procedure, and which application was dismissed contrary to law and fairness and that she became aware of the said ruling on 30th April 2025 as no notice of delivery had been served on her or my advocates. This application has therefore been filed without undue delay.
8. She avers that the court wrongly relied on a consent that was already extinguished by the revocation of the grant dated 7th August, 2023 and no application was made to adopt any such consent.
9. She avers that she has since filed a Memorandum of Appeal challenging the Ruling and rectified grant, she attached a copy of the duly filed Memorandum of Appeal and letters applying for certified proceedings and the impugned ruling.
10. She avers that the execution of the rectified grant is imminent as the Respondents, through their advocates, have written to the administrators of the estate seeking to proceed with transmission and distribution based on the rectified grant dated 12th September, 2024 and that unless stay is granted, the estate risks being distributed under the impugned rectified grant, to my grave prejudice and in disregard of the lawful confirmation dated 30th May, 2023.
11. She avers that the appeal raises arguable issues of law and has a high probability of success and this court has the jurisdiction and discretion to grant the orders sought under Section 47 and Rule 73 of the Probate and Administration Rules.
12. She avers that the rectified grant was issued in breach of Section 74 of the Law of Succession Act, which strictly limits rectification to clerical or typographical errors. The purported changes to distribution required a revocation, not a rectification and further that Rule 43 of the Probate and Administration Rules mandates that any rectification must be initiated by a summons supported by affidavit and heard inter partes. No such procedure was followed in this case. She was not served with any process, and therefore the court acted without jurisdiction.



13. Mary Kisache the respondent and a beneficiary of the estate of Kipkoech Kisache (deceased) filed a replying affidavit in response to the application.
14. She avers that the said application is incompetent, fatally defective and an abuse of the Court process and therefore the Court should dismiss it with costs.
15. She avers that the Applicant is an administrator to the estate charged with the mandate of ensuring effective and timely distribution of the estate and therefore has no locus to challenge the execution of the rectified Certificate of confirmed grant as she has not demonstrated sufficient legal interest likely to be prejudiced by the lawful implementation of the confirmed grant.
16. She avers that the succession cause pertaining to the estate of Kipkoech Kisache went through the mediation process which yielded a settlement agreement dated the 17th March 2023, she attached the mediation settlement agreement.
17. She avers that upon completion of mediation and remittance of the mediation settlement agreement back to Court, she learnt that the agreement had been fraudulently altered/amended in terms of the shares allocated to the parties without her knowledge and consent and that she wrote a complaint letter to the Honourable Court protesting on the irregular and un-procedural changes to the mediation settlement agreement.
18. She avers that the trial Court rectified an error which was apparent in line with the provisions of Section 74 of the *Law of Succession Act* which allows the Court to alter and amend errors accordingly and the trial Court had the opportunity of interrogating the parties/beneficiaries and recorded their wishes a fact not alluded to by the Appellant.
19. She avers that the rectification was procedurally and substantively proper, addressing a minor error that did not fundamentally alter the distribution of the estate but rather clarified and aligned it with the true intentions of the beneficiaries and the legal requirements.
20. She avers that the Applicant now seeks to reopen the matter on grounds that are both belated and unmeritorious, merely to frustrate the administration of the estate and delay its finalization.
21. She avers that whereas the Applicant falsely alleges that execution is imminent, no steps have been taken that qualify as execution in the legal sense, especially considering that she is an administrator to the estate, and therefore, the claim that she is in the process of executing the grant or disposing off estate property is unfounded and misleading.
22. She avers that the Applicant has not demonstrated the substantial loss she stands to suffer should the stay not be granted, which is a mandatory threshold in stay of execution applications and further that it is trite law that a party seeking a stay must prove more than mere apprehension. The Applicant's claim rests on speculation and presumption, not evidence.
23. She avers that the Applicant's intended appeal has no reasonable chances of success, as it does not raise triable or substantial grounds of law or fact. The rectification alluded to by the Applicant was within the ambit of the law, was based on sound evidence, and complied with all procedural and substantive legal thresholds.
24. She avers that the estate has been pending finalization for an inordinate period, to the detriment of all beneficiaries. Delaying its administration further by staying the implementation of a properly confirmed and rectified grant would undermine the principle of timely completion of succession causes.



25. She reiterated that the present application is a deliberate attempt by the Applicant to derail the finalization of the succession cause herein and to unnecessarily bar the implementation of the rectified certificate of confirmation of grant.
26. I have considered the application and replying affidavit and I find that the issue (s) for determination is whether to stay the execution and implementation of the orders made by the court dated 11th April, 2025 and the Rectified Certificate of Confirmation of Grant dated 12th September, 2024 pending hearing and determination of the instant appeal.
27. On the issue as to whether to stay and execution of orders of the court and rectified certificate of confirmation of grant dated 12th September, 2024, the principles upon which the court may grant stay of execution pending appeal are well-settled. These are captured in Order 42 Rule 6 of the Civil Procedure Rules which requires an applicant seeking a stay of execution pending appeal to demonstrate that - (a) Substantial loss may result to the applicant unless the order was made; (b) The application was made without unreasonable delay; and (c) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him as been given by the applicant. A stay of execution should only be granted where sufficient cause is shown.
28. In Antoine Ndiaye v African Virtual University (2015) eKLR Gikonyo J opined that “... stay of execution should only be granted where sufficient cause has been shown by the applicant. And in determining whether sufficient cause has been shown, the court should be guided by the three prerequisites provided under order 42 rule 6 of the Civil Procedure Rules...” In the instant application the applicant has demonstrated substantial loss. The applicant contended that the rectified grant was issued in breach of Section 74 of the Law of Succession Act, which strictly limits rectification to clerical or typographical errors, therefore this court is empowered to consider whether the applicant has met the prerequisites for stay under order 42 rule 6 of the Civil Procedure Rules.
29. The first consideration is whether the application was filed timeously. The court delivered its ruling on 11th April, 2025 and the applicant filed a notice of appeal and filed a memorandum of appeal within the stipulated statutory timelines. The instant application for stay of execution was filed on 4th May, 2025 and therefore filed timeously.
30. The second consideration is substantial loss, the applicant contends that she will suffer substantial loss if the orders sought are not granted as the rectified grant drastically altered her confirmed share in the estate to her detriment.
31. The respondent on her part contended that whereas the applicant was adamant that execution is imminent, no steps have been taken that qualify as execution.
32. I am satisfied that the applicant has demonstrated substantial loss. The other consideration is security. Security in this matter may not be required since this is a unique Succession Cause.
33. The upshot therefore is that the Application with merit. The same is thereby allowed with each party bearing their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 17TH DAY OF JULY, 2025

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J.K. SERGON
JUDGE

In the Presence of:-



C/Assistant – Rutoh

No Appearance for Kiletyen for applicant

Kirui for the Respondent

