



In re Estate of Philip Chumba Sirma alias Sirma S/O Chumba, Philip Sirma S/O Chumba, Philip Sirma Arap Chumba alias Philip Sirma Chumba (Deceased) (Succession Cause 395 of 2015) [2025] KEHC 10354 (KLR) (16 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10354 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 395 OF 2015
RN NYAKUNDI, J
JULY 16, 2025**

**IN THE MATTER OF ESTATE OF THE LATE PHILIPH CHUMBA SIRMA
ALIAS SIRMA S/O CHUMBA, PHILIPH SIRMA S/O CHUMBA, PHILIPH
SIRMA ARAP CHUMBA ALIAS PHILIPH SIRMA CHUMBA (DECEASED)**

BETWEEN

**JARED KIPROTICH MUTAI 1ST PETITIONER
BOAZ KIPSIGEI BIWOT'T 2ND PETITIONER**

AND

**EMILY JELIMO 1ST OBJECTOR
EDWIN KIPKOECH KEMBOI 2ND OBJECTOR**

RULING

1. What is pending before this court for determination are Summons for Rectification of Grant dated 27th February 2025 where the Applicants are seeking the following orders:
 - a. The certificate of confirmation of grant issued on 25th October, 2024 be amended by rectification as follows;
 - a. The whole portion of land parcel described as Kibagenge/Chepyegoris/2198/2 be rectified to read as Waitaluk/mabonde Block 16/Chepyegoris.
 - b. Aggrey Kipkemboi Kosgei (Deceased) be removed from the list of beneficiaries as he was the husband to Emily Jelimo who is equally on the list.



- c. Jonah Sirma (Deceased) be removed from the list of beneficiaries as at the time of his demise, he left behind no child or widow.

2. The Application is based on the following grounds among others:

- a. That the certificate of confirmation of grant issued on 25/10/2024 has some errors, as one of the land parcel described as Kibagenge/Chepyegoris/2198/2 was a block owned by a white settler as at the time of filing this cause.
- b. That at the deceased herein Philip Chumba Sirma and six others bought the said land parcel number Kibagenge/Chepyegoris/2198/2.
- c. That subsequently Kibagenge/Chepyegoris/2198/2 has now been sub divided among the six purchasers with the deceased's portion Waitaluk/mabonde Block 16/Chepyegoris measuring 9.76 Ha being registered under the name of Josphat Sirma.
- d. That pursuant to paragraph 3 above the honorable court ordered cancelation of title to Josphat Sirma.
- e. That as per the said grant, Emily Jelimo together with his deceased husband Aggrey Kipkemboi Kosgei together with the widow have been listed as beneficiaries.
- f. That Jonah Sirma (Deceased) has been listed as a beneficiary yet at the time of his demise he left behind no child nor widow.
- g. That it is necessary to amend the certificate of confirmation of grant to rectify the said errors before registration of titles can be undertaken.

3. In support of this application is the affidavit of Emily Jelimo that states as follows:

- a. That I am one of the administrator and the 1st and duly authorized to swear this affidavit.
- b. That this Honorable Court issued a certificate of confirmation of grant on 25/10/2024
- c. That we were in the process of acquiring titles and have noted that the certificate of confirmation of grant has some errors.
- d. That at the deceased herein Philip Chumba Sirma and six others bought the said land parcel number Kibagenge/Chepyegoris/2198/2 when it was still a block.
- e. That Kibagenge/Chepyegoris/2198/2 has now been sub divided among the six purchasers with the deceased's portion Waitaluk/mabonde Block 16/Chepyegoris measuring 9.76 Ha being registered under the name of Josphat Sirma Annexed herewith is a copy of the green card marked "E. J1"
- f. That pursuant to paragraph 5 above the honorable court ordered cancelation of the said property in the name of Josphat Sirma.
- g. That as per the said grant, I together with my deceased husband Aggrey Kipkemboi Kosgei together with the widow have been listed as beneficiaries when my name alone would suffice.



- h. That Jonah Sirma (Deceased) has been listed as a beneficiary yet at the time of his demise he left behind no child nor widow.
 - i. That it is necessary to amend the certificate of confirmation of grant to rectify the said errors before registration of titles can be undertaken.
 - j. That I swear this affidavit in support of summons for amendment of grant
4. The Application is opposed vide a Replying Affidavit dated 6th March 2025 sworn by Josephat Sirma who avers as follows:
- a. That the grant in question and the one to be rectified is subject of an appeal which I have filed hence the application should not be considered before the appeal is determined.
 - b. That the property in question is land which is actually the subject of the appeal hence if the application is allowed then the appeal and the entire exercise shall be rendered nugatory.
 - c. That I have been advised by my advocates on record whose information I believe to be true that we presented an application at the court of appeal for approval on or about 3rd March, 2025 but the same is still pending approval by the deputy registrar.
 - d. That I have been advised by my advocates on record whose information I believe to be true that we have also requested for typed proceedings which have delayed in filing our appeal.
 - e. That I therefore swear this affidavit opposing any rectification of grant since the grant issued is the subject of an appeal which we intend to canvas at the court of appeal.
 - f. That I have been advised by my advocates on record whose information I believe to be true that it is only fair that the application be halted pending appeal since we have expressed our desire to appeal the decision.

Decision

5. The question to be answered from these contentious affidavits of Emily Jerono and Josephat Sirma has got to be understood within the interpretation of the provisions of section 74 of the [*laws of succession Act*](#). It is therefore necessarily to remind the parties the text and context of the law on rectification;
74. Errors may be rectified by court:
- Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”
6. Moreover, Rule 43(1) of the [*Probate and Administration Rules*](#) provides as follows: “Where the holder of a grant seeks pursuant to the provisions of section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the time or place of death of the deceased



or, in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was made.”

7. The superior courts have construed what constitutes elements in the making of grant of letters of administration has can be appreciated from the following authorities. *In the matter of the Estate of Geoffrey Kinuthia Nyamwinda (deceased)* [2013] eKLR the court stated;

The law on rectification or alteration of grants is Section 74 of the *Law of Succession Act* and Rule 43 of the *Probate and Administration Rules*..... What these provisions mean is that errors may be rectified by the court where they relate to names or descriptions, or setting out of the time or place of the deceased’s death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general.....

8. Similarly, *in the matter of the Estate of Hasalon Mwangi Kabero* [2013] eKLR, the court stated as follows:

“When dealing with an application for rectification of grant to add a full name of person who was omitted.”

An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased death, or the purpose of a limited grant. Is an omission of a name or in the description of a thing an error” It would be an error if say a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word “error” too far to say that that would amount to the error or mistake envisaged in Section 74 and Rule 43.

9. I have read the two affidavits one in support of the application of rectification and other the one objecting to the grant of remedy of rectification primarily on the grounds that there is a pending appeal before the Court of Appeal hence this court has no jurisdiction to adjudicate over the summons. In this case essentially matters being pleaded on rectification are of a secondary nature which do not go to the core of the basic structure of the confirmation of grant dated 24th May 2024. For purpose of this application it is all about the mischaracterization of the properties in question, the deletion of the deceased beneficiaries namely Aggrey Kipkemboi Kosgei and Jonah Sirma and in any event proper substitution be undertaken by administrators to give effect to the acquisition of those shares by the living persons. This does not have to wait the outcome of the so purposed appeal by Josephat Sirma.
10. The rectification once effected crystallizes the identity of the beneficiaries, proper description of the assets and any such incidental to the final decree of the court. The objection raised by Josephat Sirma is therefore dismisses for want of merit and in its place the summons for rectification of grant dated 27th February 2025 be allowed. Perhaps in the process of prepare this ruling and on the perusal of the record it emerged there are two certificates of confirmation of grant one dated 24th May 2024 properly sealed and issued by Hon. Justice Wananda J and a corresponding one under the name and style of Hon. Justice Nyakundi dated 25th October 2024.
11. This error on the face of the record seems not to have been addressed by the administrators. This existence of the two grants on record cannot be left to stand and be dint of sections 1 (A), 1(B), 3, 3 (A) and section 80 of the *CPA* as read with Rule 73(1) of the *Probate and Administration Rules* and Order 45 Rule 1 of the *CPR*. The certificate of confirmation of grant dated 12th May 2024 is vitiated



by patent illegality, irregularity and impropriety on the face of noncompliance with procedural law. The administrators shall ensure that the valid portions in certificate of confirmation of 24th day of May 2024 be clarified within the confines of the law and incorporated in the comprehensive certificate of confirmation of grant dated 25th October 2024. To deny the court the authority to modify or set the issues in contestation right at this stage will impose significant hardships, escalate costs and lead to unnecessary delays that would defeat their fair administration of justice in the transmission of this estate. There are no compelling reasons where the parties should be allowed to undergo an extra round of adjudication merely to affirm a decision that could be easily be arrived by the court.

12. The expression review in our context under section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules* is used in two distinct senses namely: (1) A procedural review which is either inherent or implied in a court or tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review in merits when the error sought to be corrected is one of law and is apparent on the face of the record.
13. Obviously when a review is sought due to a procedural defect, the inadvertent error committed by the court must be corrected ex debito justitiae to prevent the abuse of its process are inherent in every probate court under section 1(A), 1(B), 3, 3 (A) of the *CPA* as read together with Rule 73 (1) of the *Probate and Administration Rules*. The availability of this unfettered powers conferred upon the courts enables them as they go about adjudicating disputes, taking evidence, evaluating it to establish the discharge of the burden proof on existence or non-existence of facts on issue to address the various situations efficiently rather than remand the case for a denovo trial. This jurisdiction should not be conflated with one sitting or an appeal on a decision of the court with concurrent jurisdiction. This is not an open ended jurisdiction rather it is a limited power conferred to various levels of courts confined to compelling, substantial, and limited circumstances on issues identified by the court. My reasoning does not breach the doctrine of the independence and autonomy of the decision making of the court.
14. I think I have said enough on this issue but recognition must be given to the primary issue of allowing the summons for rectification of grant dated 27th January 2025. I make no orders as to costs.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 16TH JULY 2025

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R. NYAKUNDI
JUDGE

