



REPUBLIC OF KENYA



**KENYA LAW**

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**In re Estate of the Late Kipkosgei arap Moita (Deceased) (Succession Cause  
25 of 1995) [2025] KEHC 13189 (KLR) (25 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13189 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT ELDORET**

**SUCCESSION CAUSE 25 OF 1995**

**RN NYAKUNDI, J**

**SEPTEMBER 25, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE KIPKOSGEI ARAP MOITA (DECEASED)**

**BETWEEN**

**JOHN KIRWA MOEK ..... APPLICANT**

**AND**

**CORNELIUS BUNGEI KIRORYO ..... 1<sup>ST</sup> RESPONDENT**

**MONICA RUTO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me for determination are two applications for determination. The first one is a Notice of Motion dated 27<sup>th</sup> June, 2025 expressed under the provisions of section 1, 1A, 3, 3A and 63(e) of the [Civil Procedure Act](#) and order 51 Rule 1 Civil Procedure Rules and Rule 49 and 73 of the Probate and Administration Rules. The applicant sought orders that:
  - a. Spent
  - b. There be a partial stay of execution of the amended certificate of confirmation of Grant issued on 22<sup>nd</sup> November, 2023 on the 5<sup>th</sup> house of Mrs. Chebor Chelel Moek on land parcel Kipksbus Block 4/13 (kipkabus) pending the hearing and determination of this application interparties.
  - c. That orders do issue to the County Land Surveyor Uasin Gishu directing him to carry out the surveying of the entire parcel of land comprised of Kipksbus Block 4/13 (Kipkabus) for purposes of distribution and implementation of the amended Certificate of Confirmation of Grant issued on 22<sup>nd</sup> November, 2023.
  - d. Costs be in the cause.
2. The application is anchored on grounds that:



- a. The Respondents herein made an application to this court dated 29<sup>th</sup> February, 2025 seeking the Uasin Gishu Land Surveyor to carry out subdivision in respect to land title No. Plateu Kipkabus Block 4 (Ielmokwo)/13 in furtherance of the implementation of the distribution orders in the amended certificate of confirmation of Grant issued on 22<sup>nd</sup> November, 2023.
  - b. The Honourable court allowed the said application vide its Ruling delivered on 28<sup>th</sup> March, 2025 it directed the carrying out the scheme of distribution in the making mutation of the property in question.
  - c. That the said scheme/surveying was conducted on 11<sup>th</sup> June, 2025.
  - d. That after the surveying the said land, it has been established that the remaining portion is 21.18 acres and not 29 acres as indicated on the amended Certificate of Confirmation of Grant issued on 22<sup>nd</sup> November, 2023.
  - e. That the amended certificate of confirmation of Grant was issued without surveying land parcel Kipkabus is surveyed to ascertain the exact acreage before the same is distributed as per the amended certificate of confirmation of Grant issued on 22<sup>nd</sup> November, 2023.
  - f. That this application has been brought in good faith and in the interest of justice and fairness.
  - g. The applicant now prays surveying of land parcel Kipkabus Block 4/13 (Kipkabus) to ascertain the exact acreage.
3. The second application is summons for rectification of Grant dated 22<sup>nd</sup> July, 2025 expressed under the provisions of section 74 of the Succession Act, Rule 43 of the Probate and Administration Rules in which the administrator, Cornelius Bungei Kiroryo seeking orders as follows:
- a. Spent
  - b. That the certificate of confirmation of grant issued dated the 22<sup>nd</sup> November, 2023 be rectified/ amended as follows:  
Under item (F) on shares  
The name under paragraph 2 indicated as Mathias Kosgei be rectified to Mathew Kiplimo Kosgei as per the particulars in his national identification card.
  - c. Kibware Plc Shares be included in the aforesaid Certificate of Confirmation of Grant as appears in the consent dated 22<sup>nd</sup> November, 2023.
  - d. That the directors of Kibware PLC do pay the Dividends due to the estate of the deceased for the 33 years since 1992-2025 to the administrators for distribution to the beneficiaries.
  - e. Costs of this application be provided for.
    1. The summons is anchored on grounds that:
      - a. An amended Certificate of confirmation of grant was issued on 22<sup>nd</sup> November, 2023 which was pursuant to a consent of even date.
      - b. That in the said amended Certificate of Confirmation of Grant there was an omission of the shares of Kibware PLC which had been agreed upon in consent.



- c. That the said omission was inadvertent and not deliberate and the mistake was on the part of the court when preparing the amended certificate of confirmation of grant.
- d. Similarly, the estate has not received the dividends due from KIBWARE PLC from the deceased passed on in the year 1992 to date which is not about 33 years.
- e. That it is necessary that the directors be ordered to submit the amount due to the administrators for distribution.
- f. That the orders sought herein shall not in any way cause anyone to suffer prejudice.
- g. That the application has been made in good faith.

### **Analysis and determination**

5. I have considered the applications herein, the supporting affidavits, and the submissions by learned counsel appearing for the parties. Both applications are unopposed.
6. The applicant in the first application has brought to the attention of the court a significant discrepancy that emerged following the survey conducted on 11<sup>th</sup> June 2025. According to the survey results, the remaining portion of land parcel Kipksbus Block 4/13 (kipkabus) measures 21.18 acres, not 29 acres as indicated in the amended Certificate of Confirmation of Grant issued on 22<sup>nd</sup> November 2023. This is not a minor variance that can be overlooked. It represents a substantial difference of approximately 7.82 acres, which would materially affect the distribution scheme if left unaddressed.
7. The court notes that the amended Certificate of Confirmation of Grant was issued without a prior survey to ascertain the exact acreage of the land in question. While this may have been done in good faith based on available information, the subsequent survey has revealed a reality that cannot be ignored. To proceed with distribution based on inaccurate acreage would be to perpetuate an error that could lead to injustice among the beneficiaries.
8. The question that arises is whether distribution should proceed on the basis of the existing certificate, or whether the discrepancy warrants intervention at this stage. On the one hand, there is value in finality and moving forward with implementation of the distribution scheme already sanctioned by the court. On the other hand, proceeding with distribution based on incorrect acreage could result in beneficiaries receiving either more or less than their rightful share, leading to potential disputes and the need for further court intervention in the future.
9. If distribution were to proceed as currently ordered, particularly with respect to the 5<sup>th</sup> house of Mrs. Chebor Chelel Moek, and it later emerged that the land measurements were incorrect, the court would be faced with the unenviable task of unraveling completed distributions. Such a scenario would likely give rise to fresh disputes among beneficiaries and potentially protracted litigation. The question then becomes whether it is more prudent to pause at this juncture to ensure accuracy, or to press forward and deal with complications as they arise.
10. It is therefore my considered view that this court cannot distribute what it has not properly ascertained. While there may be some delay occasioned by a fresh survey, such delay serves the greater interest of ensuring that each beneficiary receives their proper entitlement based on the actual extent of the estate property.



11. Having weighed these considerations, I am persuaded that the proper course is to ascertain accuracy before proceeding with distribution. The partial stay of execution sought with respect to the 5<sup>th</sup> house will preserve the status quo while the true extent of the estate is determined. Similarly, ordering a comprehensive survey will provide the factual foundation necessary for equitable distribution among all beneficiaries.
12. Moving to the second application, the administrator has brought to the court's attention certain errors and omissions in the amended Certificate of Confirmation of Grant that require rectification. I shall address each in turn.
13. Rectification is done to rectify or to correct errors in names or description of any person or thing or as to the time or place of death. In the matter of the estate of Hasalon Mwangi Kahero [2013] eKLR the Court stated:

“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's 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 I 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.”

14. In the matter of the estate of Geoffrey Kinuthia Nyamwinga(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.....

Where a proposed amendment of a grant cannot be dealt with under the provisions of Section 74 of the *Law of Succession Act*, the applicant ought to approach the Court under Order 44 of the Civil Procedure Rules. A review under Order 44 of the Civil Procedure Rules may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason. The applicant in this case should have moved the Court under this provision – Order 44 of the Civil Procedure Rules on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant.”

15. First, there is the matter of the incorrect name appearing under item (F) on shares. The certificate currently indicates "Mathias Kosgei" when it should read "Mathew Kiplimo Kosgei" as per the particulars in his national identification card. This is clearly a clerical error in the recording of the beneficiary's name. The rectification of a name to reflect accurate identification documents is a straightforward matter that occasions no prejudice to any party. Indeed, it is necessary to ensure that the rightful beneficiary can properly claim his entitlement without bureaucratic impediment.
16. Second, and more significantly, there is the omission of Kibware PLC shares from the Certificate of Confirmation of Grant. The administrator has demonstrated that these shares were included in



the consent dated 22<sup>nd</sup> November 2023 but were inadvertently omitted when the court prepared the amended certificate. I have perused the consent and confirm that the KIBWARE PLC shares were indeed part of the agreement between the parties. This omission was clearly unintentional and constitutes an administrative oversight that should be corrected.

17. The failure to include these shares in the certificate has had the unfortunate consequence of depriving the estate and consequently the beneficiaries of dividends accruing from these shares over a period of 33 years, from 1992 when the deceased passed on to the present year 2025. This is a substantial period, and the accumulated dividends likely represent a significant asset of the estate that has remained undistributed.
18. The prayer for orders directing the directors of Kibware PLC to pay the dividends due to the estate is both proper and necessary. These dividends form part of the deceased's estate and should rightfully be distributed among the beneficiaries according to the scheme of distribution. The administrators, as fiduciaries of the estate, have the responsibility to collect all assets belonging to the estate and distribute them accordingly. The court has the jurisdiction to facilitate this process by issuing appropriate orders.
19. Accordingly, the following orders shall abide:
  - a. The execution of the amended Certificate of Confirmation of Grant issued on 22<sup>nd</sup> November 2023 is hereby stayed, but only insofar as it relates to the 5<sup>th</sup> house of Mrs. Chebor Chelel Moek situated on land parcel Kipksbus Block 4/13 (kipkabus), pending the completion of the survey.
  - b. The County Land Surveyor, Uasin Gishu County, is hereby directed and ordered to carry out a comprehensive survey of the entire land parcel comprised in Kipksbus Block 4/13 (kipkabus) within forty-five (45) days from the date of this ruling, for the purposes of ascertaining the exact acreage and facilitating accurate distribution and implementation of the amended Certificate of Confirmation of Grant.
  - c. Upon completion of the said survey, the County Land Surveyor shall file in court a detailed survey report showing the exact measurements and acreage of the said land parcel within fourteen (14) days of completing the survey.
  - d. In respect to the application dated 22<sup>nd</sup> July, 2025, the Certificate of Grant dated 22<sup>nd</sup> November, 2023 shall be amended in consonance with the reliefs sought in the said question.
20. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 25th DAY OF SEPTEMBER 2025**

.....

**R. NYAKUNDI**

**JUDGE**

