



REPUBLIC OF KENYA



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**In re Estate of the Late Kiplalang Kiplanduk (Deceased) (Succession Cause 256 of 1996) [2025] KEHC 12518 (KLR) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12518 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 256 OF 1996  
RN NYAKUNDI, J  
SEPTEMBER 9, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE KIPLALANG KIPLANDUK (DECEASED)**

**BETWEEN**

**MARY JEMITEI KIPSEREM ..... 1<sup>ST</sup> PETITIONER  
JEROP MISOI ..... 2<sup>ND</sup> PETITIONER  
JOHNAH MISOI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**JOHNAH MISOI ..... APPLICANT**

**RULING**

1. What is pending before this Court for determination is summons for revocation or annulment and rectification of Grant where the following orders are being sought;
  - a. That the grant of letters of administration intestate issued to Mary Jemitei Kipserem, Jerop Misoi And John K. Misoi- Deceased on the 13<sup>th</sup> day of October, 2008 be revoked on the grounds that the grant has become useless and inoperative through subsequent circumstances, that is, the death of one (John K. Misoi-deceased) of the three (3) appointed administrators.
  - b. That upon revocation of grant of letters of administration intestate issued to Mary Jemitei Kipserem, Jerop Misoi And John K. Misoi- Deceased on the 13<sup>th</sup> day of October, 2008; Mary Jemitei Kipserem, Jerop Misoi and Johnah Misoi be appointed as administrators of the Estate of Kiplalang Kiplanduk – Deceased and grant of letters of administration intestate be issued accordingly.
  - c. That upon issuance of grant of letters of administration to Mary Jemitei Kipserem, Jerop Misoi And Johnah Misoi the same be rectified and/or amended as per attached schedule and Certificate of Confirmation of Grant be issued accordingly.



2. The summons is supported by the annexed affidavit sworn by Mary Jemitei Kipserem, Jerop Misoi And Johnah Misoi who deponed as follows;
- a. That in a pool of many beneficiaries; we (1<sup>st</sup> and 2<sup>nd</sup> Petitioners/Applicants) are the only surviving appointed Administrators and personal/legal representatives of the estate of the above-named Kiplalang Kiplanduk- Deceased who died on the 22<sup>nd</sup> day of January, 1996.
  - b. That the above-named Kiplalang Kiplanduk- Deceased who died on the 22<sup>nd</sup> day of January 1996 and a grant of letters of administration intestate was issued to Chelimo Kimisoi-deceased And Johnk. Misoi-deceased on the 22<sup>nd</sup> day of October 1997.
  - c. That substituted grant of letters of administration intestate was issued to Mary Jemitei Kipserem, Jerop Misoi And John K. Misoi- Deceased on the 13<sup>th</sup> day of October, 2008 has become useless and inoperative through subsequent circumstances, that is, death of one John K. Misoi- Deceased of the three (3) appointed administrators.
  - d. That substituted grant of letters of administration intestate issued to Mary Jemitei Kipserem, Jerop Misoi And John K. Misoi- Deceased on the 13<sup>th</sup> day of October, 2008 was confirmed on 1<sup>st</sup> November 2010 vide certificate dated 26<sup>th</sup> September 2011.
  - e. That all that parcel of land known as KAptagat/kaptagat Block 3 (misoi)/28 formerly known as K12 measuring approximately 4.5 Acres which is currently being occupied and utilized by the surviving beneficiaries as grazing and animals watering ground of the above named estate of Kiplalang Kiplanduk- Deceased who died on the 22<sup>nd</sup> day of January 1996 was erroneously listed as a public utility.
  - f. That during confirmation proceedings; beneficiaries were informed by their advocate on record then that all that parcel of land known as Kaptagat/Kaptagat Block 3 (Misoi)/28 formerly known as K12 measuring approximately 4.5 Acres which was being used by administrators and beneficiaries as grazing and animals watering ground would be confirmed as “family public land” only to be erroneously confirmed as a public utility.
  - g. That all other public utilities as per confirmed grant are being utilized and occupied by the public.
  - h. That as per the document filed in court in 10/8/2001 all proposed public utilities minus roads made up a total of 7.5 Acres which was later scaled up to 8.5 Acres and all beneficiaries have no objection.
  - i. That the grant of letters of administration and proceedings therein be revoked and earlier issued grant be amended accordingly.
  - j. That upon revocation of grant of letters of administration intestate issued to Mary Jemitei Kipserem, Jerop Misoi And John K. Misoi- Deceased on the 13<sup>th</sup> day of October, 2008; Mary Jemitei Kipserem, Jerop Misoi And Johnah Misoi be appointed as administrators of the Estate of Kiplalang Kiplanduk – Deceased and grant of letters of administration intestate be issued accordingly.
  - k. That upon issuance of grant of letters of administration to Mary Jemitei Kipserem, Jerop Misoi And Johnah Misoi the same be rectified and/or amended as per attached schedule and Certificate of Confirmation of Grant be issued as hereunder for reasons that: -



- a. A portion measuring 1.5 to be utilized for legal fees and procurement of titles as per the schedule hereunder.
- b. A portion measuring approximately 3.0 Acres to be registered under the name of Administrators to hold trust for all other beneficiaries.

No	Parcel Name	Beneficiary	Size
	Kaptagat/Kaptagat Block 3 (Misoi)/28	Boaz Kimeli Bulbul	1.5 Acres
	Kaptagat/Kaptagat Block 3 (MISOI)/28	Mary Jemitei Kipserem, Jerop Misoi and Johnah Misoi (to hold trust for all other beneficiaries)	3.0 Acres

- l. That it is in the interest of justice that the application herein be allowed and the grant be revoked.
3. Before I delve into the merits of this application, I would like to contextualize the background relating to this succession Cause.

### Background

4. This succession cause relates to the above-named Kiplalang Kiplanduk- Deceased who died on the 22<sup>nd</sup> day of January 1996 and a grant of letters of administration intestate was issued to Chelimo Kimisoi-deceased And Johnk. Misoi-deceased on the 22<sup>nd</sup> day of October 1997. On 8<sup>th</sup> February 2008, Mary Jemitei Kipserem And Jerop Misoi filed summons for revocation or annulment of grant seeking orders that: the grant of letters of Administration intestate made to the Petitioners, Chelimo Kimisoi And John K. Misoi on the 22<sup>nd</sup> day of October 1997 be and is hereby revoked and or annulled; grant of letters of administration intestate be issued afresh to the Applicants herein, Mary Jemitei Kipserem And Jerop Misoi. On 13<sup>th</sup> day of October 2008, substituted Grant of Letters of Administration was issued by Justice P.M Mwilu as then she was in which Mary Jemitei Kipserem, Jerop Misoi And John K. Misoi were listed as the Administrators and/or personal representatives of the estate of the deceased.
5. On 13<sup>th</sup> August 2010, the above mentioned Administrators and/or personal representatives filed summons for confirmation of grant pursuant to section 71(3&4) of the Law of Succession Act and Rule 40 of the Probate and Administration Rules seeking the following orders: Grant of letters of Administration intestate made to the Applicants by the Honourable court in this cause on the 13<sup>th</sup> October 2008 be confirmed; the estate of the late Kiplalang Kiplanduk be distributed as per the schedule provided for in the affidavit of John K. Misoi, Jerop Misoi And Mary Jemitei Kipserem. That substituted grant of letters of administration intestate issued to Mary Jemitei Kipserem, Jerop Misoi And John K. Misoi- Deceased on the 13<sup>th</sup> day of October, 2008 was confirmed on 1<sup>st</sup> November 2010 vide certificate dated 26<sup>th</sup> September 2011. In particular, the Certificate of Confirmation of Grant provided as follows;

Schedule (Amalgamation Of L.r No 7914/2 & 8802)



No.	Name	Plot (Provisional Numbers)	Size (Acres)
	Jonathan Kiptoo Misoi	K32, K 6	18.7, 1
	Jenny Jerotich Kimaiyo	K25, K11	18.7, 1
	Rosaline Chepkoech Misoi	K27, K9	18.7, 1
	Joseph Kiplagat Misoi	K24, K18	18.7, 1
	Willy Kimutai Misoi	K38, K17	18.7, 1
	Johnah Misoi	K26, K2	18.7, 1
	David Misoi	K40, K21	18.7, 1
	Christine Chebet Kimaiyo	K23, K19	18.7, 1
	Susana Jepkosgei	K35, K4	18.7, 1
	Jebiwot Taplelei Kipsum	K30, K5	18.7, 1
	Jemutai Tanui	K33, K7	18.7, 1
	Catherine Chepchirchir Kimutai	K39, K20	18.7, 1
	Jepkemei Rotich	K36, K10	18.7, 1
	John K. Misoi	K34, K3	18.7, 1
	Mary Jemitei Kipserem	K29, K8	18.7, 1
	Jerop Misoi	K37, K16	18.7, 1
	Nancy Riley	K13	8.4
	Public Utility	K12, K28	4.5, 8.5
	Administrators to sell to finance survey and	K31	2.3



	procurement of Titles of each beneficiary		
	Joan Jepchirchir Sumbeiywo	K22	2
	Lilian C. Lagat		3
	Robert Ngisirei		3
	Alice Kalya		5
	Elijah Koech Chebotibin	K15	0.35
	Church (A.I.C) Sosiot)	K1	1

### Analysis and Determination

6. I have carefully read and considered the application before this Honourable Court. There are 2 issues manifest for determination in this matter namely;
- a. Whether this Court should revoke the grant of letters of Administration issued to Mary Jemitei Kipserem, Jerop Misoi and John K. Misoi-deceased.
  - b. Whether the Certificate of Confirmation of Grant dated 26<sup>th</sup> September 2011 should be rectified to address the alleged erroneous listing of Kaptagat/Kaptagat Block 3 (misoi)/28 (approximately 4.5 acres) as a public utility.

### Whether this Court should revoke the grant of letters of Administration issued to Mary Jemitei Kipserem, Jerop Misoi and John K. Misoi-deceased.

7. The estate of Kiplalang Kiplanduk (deceased on 22 January 1996) was initially administered under a grant of letters of administration intestate issued on 22 October 1997 to Chelimo Kimisoi (deceased) and John K. Misoi (deceased). A substituted grant was later issued on 13<sup>th</sup> October 2008 to Mary Jemitei Kipserem, Jerop Misoi And John K. Misoi (deceased) and was confirmed on 1<sup>st</sup> November 2010 (certificate of Confirmation of Grant dated 26<sup>th</sup> September 2011). The Applicants now seek revocation of the grant of Letters of Administration issued on 13<sup>th</sup> October 2008 on the footing that it has become useless and inoperative due to the subsequent death of one administrator.
8. The applicable law on this issue is section 76 of the [Law of Succession Act](#). In particular, this section provides that a Grant may be revoked if the same is found to have become useless and/or inoperative. Where a single Executor/Administrator dies then the grant is rendered both useless and inoperative. This is because a Grant of representation is issued to a particular person or persons. It is given ‘in personam’ and cannot be transferred to a third party under any circumstances. Section 81 of the [Law of Succession Act](#) deals with a situation where one or more of several administrators passes away. In such



a situation the surviving Administrator [s] are mandated to proceed with the administration of the estate to finality. In particular, this section provides as follows;

81. Powers and duties of personal representatives to vest in survivor on death of one of them

Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executors or administrators shall become vested in the survivors or survivor of them:

Provided that, where there has been a grant of letters of administration which involve any continuing trust, a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.

9. In Re Estate of George Ragui Karanja (Deceased) [2016] eKLR, this Honourable Court expounded as follows: -

“The *Law of Succession Act* does not expressly provide for substitution of personal representatives who die in office, particularly in cases where the estate is left without one. The closest provision is section 81 of the Act which provides for vesting of the powers and duties of personal representatives in the survivor of survivors of a dead personal representative. The provision provides as follows; -

“Upon the death of one or more of several executors or administrators to whom a grant of representation has been made, all the powers and duties of the executor or administrators shall become vested in the survivors or survivor of them provided that, where there has been a grant of letters of administration which involve any continuing trust a sole surviving administrator who is not a trust corporation shall have no power to do any act or thing in respect of such trust until the court has made a further grant to one or more persons jointly with him.

It would appear to me that once all the holders of a grant die section 81 of the Act would be of no application. Indeed, the said grant becomes useless and inoperative and liable for revocation under Section 76(e) of the *Law of Succession Act* to pave way for appointment of new administrators. The appointment of fresh administrators takes the place of the previous ones following their death is subject to the provisions of sections 51 through to section 66 of the Act.”

10. Moreover, in Re Estate of Elijah Oktah Mikah Tsimbwele (Deceased) [2021] eKLR, the Court stated that;

“The death of one or more administrators does not affect the grant, in terms of rendering it invalid or inoperative or useless. Under Section 81 of the Act, the powers and duties of personal representative rest in the surviving personal representative on the death of one of them. Section 76(e) of the Act only applies where there is a sole administrator who then dies.....”

11. From the above provisions, it is crystal clear that Section 76 of the *Law of Succession Act* permits revocation where, inter alia, “the grant has become useless and inoperative through subsequent



circumstances.” However, section 81 of the [Law of Succession Act](#) provides that where there are several administrators upon the death of one, the powers and duties vest in the survivors, unless a contrary intention appears. Thus, the mere death of one out of several administrators does not render the grant useless and inoperative. Thus revocation is therefore not necessary for this reason and it is my finding that the prayer for revocation on this ground is declined.

**Whether the Certificate of Confirmation of Grant dated 26<sup>th</sup> September 2011 should be rectified to address the alleged erroneous listing of Kaptagat/Kaptagat Block 3 (MISOI)/28 (approximately 4.5 acres) as a public utility.**

12. The powers of this court to grant rectification of grant is provided for in section 74 of the [Law of Succession Act](#). This section provides as follows;

“Errors in names and descriptions, or in setting out 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.”

13. The marginal notes under the section states that errors may be rectified by the court. On the other hand, Rule 43(1) of the Probate and Administration Rules provides:

“Where the holder of grant seeks pursuant to 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 and places 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.”

14. In general terms rectification is meant to correct errors which will not substantially interfere or change the grant and the certificate of grant. I may also point out that minor errors are what rectification seeks to address. In the matter of the Estate of Geoffrey Kinuthia Nyamweinga 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 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. The Applicants have deponed that KAPTAGAT/KAPTAGAT BLOCK 3 (MISOI)/28 (4.5 acres) used historically for grazing and watering by the family was erroneously listed as a public utility at



confirmation. They state that other public utilities (7.5–8.5 acres) remain intact and are in public use, and that beneficiaries raise no objection.

16. On the material before me and absent any competing claim by a public body or member of the public, I am persuaded that the public utility designation was a mistake of substance capable of correction to reflect the estate's true intention and usage. However, because public utility can carry planning/ registration implications beyond succession, prudence dictates that the rectification shall not purport to divest any right already vested in the public or in a public authority (if any). The rectification will therefore be conditional: it operates to rectify the certificate as between the beneficiaries and the estate and its implementation shall be subject to confirmation from the Land Registrar/Director of Surveys that parcel Kaptagat/Kaptagat Block 3 (MISOI)/28 is not presently registered or reserved as public land. If it is, the administrators shall seek the appropriate relief in the proper forum.
17. It is thus my finding that the certificate of confirmation of Grant is rectified under section 74 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules to remove the public utility designation for Kaptagat/Kaptagat Block 3 (MISOI)/28 and to place that parcel under the Administrators in trust for all beneficiaries' subject to the administrative confirmation stated above.
18. I take cognizant note that the Applicants herein proposed allocation of 1.5 acres to Boaz Kimeli Bulbul for legal fees and title procurement and 3.0 acres to be registered under the name of Administrators to hold in trust for all other beneficiaries. As a general rule, legal fees are payable from estate funds upon taxation or consent; the direct alienation of a specific estate asset to meet fees calls for clear proof of agreement or consent of all beneficiaries (or a taxed bill) to avoid inequity.
19. I take cognizant note that from the supporting affidavit, the Applicants proposed that 1.5 acres of parcel Kaptagat/Kaptagat Block 3 (MISOI)/28 be allocated to Boaz Kimeli Bulbul for legal fees and procurement of titles. They also deponed that the beneficiaries have no objection to this arrangement. The applicable law here is section 83 of the Law of Succession Act which provides as follows;

83. Duties of personal representatives

Personal representatives shall have the following duties-

- (a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;
- (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;



(g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.

(h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

(i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

20. I take note that consent of beneficiaries is important in succession where the estate property is distributed, any alienation such as carving out land to satisfy costs) should either be consented to by all beneficiaries or approved by Court as just and equitable. Courts are however cautious in allowing direct alienation of estate property to advocates, since legal costs should ideally be met from the estate generally (liquid funds) and not from a specific parcel unless all beneficiaries' consent and the arrangement is transparent.
21. From the case at bar, the Applicants have shown that all beneficiaries have no objection to the allocation of 1.5 acres for legal fees and the property in question Kaptagat/Kaptagat Block 3 (MISOI)/28 was erroneously classified as public utility but has since been corrected to form part of the estate. Since no objection exists and the estate has no indication of liquid funds the Court is entitled under its inherent jurisdiction section 47 of the [Law of Succession Act](#) and Rule 43 of the Probate and Administration Rules to sanction this arrangement so long as it serves the ends of justice and ensures smooth administration.
22. In view of the foregoing, the following orders shall abide;
- a. The prayer for revocation of grant of Letters Administration intestate dated 13<sup>th</sup> October 2008 under section 76(e) of the [Law of Succession Act](#) is declined by virtue of section 81 of the [Law of Succession Act](#), the death of one co-administrator did not render the grant useless or inoperative.
  - b. The certificate of confirmation of Grant dated 26<sup>th</sup> September 2011 is rectified under section 47 of the [Law of Succession Act](#) and Rule 73 of the Probate and Administration Rules to remove the public utility designation against Kaptagat/Kaptagat Block 3 (MISOI)/28 measuring approximately 4.5 acres and to substitute therefor: "To be registered in the names of Mary Jemitei Kipserem And Jerop Misoi as administrators and trustees for all beneficiaries of the estate of Kiplalang Kiplanduk."
  - c. That further to clause (b) above, this rectification is conditional upon written confirmation from the Land Registrar/Director of Surveys that the parcel is not presently registered or reserved as public land/public utility; if it is, implementation shall await appropriate relief in the proper forum.
  - d. That 1.5 acres of land parcel Kaptagat/Kaptagat Block 3 (MISOI)/28 be allocated to Boaz Kimeli Bulbul in full and final settlement of his legal fees and costs of procuring titles, with the consent of the beneficiaries having been duly noted.



- e. That the remaining 3.0 acres of the said parcel shall be registered in the names of the administrators, to hold in trust for all beneficiaries of the estate.
- f. The administrators shall within 30 days' file:
  - i. The Land Registrar/Director of Surveys confirmation and
  - ii. A progress report on steps taken toward registration in their names as trustees, and any intended subdivision consistent with the confirmed schedule and beneficiary consents.
- g. The Deputy Registrar shall issue an Amended Certificate of Confirmation of Grant accordingly.
- h. There shall be no order as to the costs this being a family matter.
- i. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET THIS 9<sup>TH</sup> DAY OF SEPTEMBER 2025**

.....

**R. NYAKUNDI**  
**JUDGE**

