



REPUBLIC OF KENYA



In re Estate of Samson Seroney Marie (Deceased) (Succession Cause 159 of 2011) [2025] KEHC 14299 (KLR) (15 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14299 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 159 OF 2011
RN NYAKUNDI, J
OCTOBER 15, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE SAMSON SERONEY MARIE (DECEASED)
THROUGH
ZIPORAH J. KIRUI -PETITIONER**

RULING

1. What is pending before this Honourable Court for determination is Summons for Rectification of Grant dated 18th September 2025 brought pursuant to section 40 and 74 of the *Law of Succession Act* where the Petitioner/Applicant is seeking the following orders: -
 - a. That the Grant of Letters of Administration issued to Zipporah J. Kirui on 18th March 2014 be rectified to include L.R No. Eldoret/MUN/Block 4/112.
 - b. That costs be in the costs.
2. The application is made on the following grounds on the face of it among others;
 - a. That the Applicant is the petitioner and/or Administratrix in this cause.
 - b. That one of the properties forming part of the estate of the deceased was erroneously omitted.
 - c. That Plot No. Eldoret/MUN/Block 4/112 was jointly owned by the deceased herein.
 - d. That the foresaid parcel of land would be included among the properties forming part of the estate.
3. The application is supported by the annexed affidavit dated 18th September 2025 sworn by Zipporah J. Kirui who deponed as follows:
 - a. That I am a female adult of sound mind and the legal administrator of the Estate of the late Samson Seroney Marie.



- b. That a Grant of Letters of Administration was issued in this case and confirmed on the 18th March 2014.
- c. That L.R NO. Eldoret/MUN/Block 4/112 forming part of the Estate of the deceased was erroneously omitted in the cause pleadings.
- d. That I have been advised by my counsel which information I verily believe to be true that unless I make an application for rectification of the grant to include this property, the estate will remain un-administered.
- e. That it is only fair and prudent that the grant confirmed on 18th March 2014 and rectified to reflect that parcel of land namely L.R NO. Eldoret/MUN/Block 4/112.
- f. That I therefore swear this affidavit in support of the application now before court.

Resolution

4. I have read and considered the pleadings herein. There is one issue manifest for determination:

Whether the summons for rectification of grant is merited?

5. Rectification of a grant is a legal process under Section 74 of the [Law of Succession Act](#) and Rule 43 of the Probate and Administration Rules, which allows the court to correct minor specific errors in a grant of representation or a certificate of confirmation. The said section 74 of the [Law of Succession Act](#) provides as follows: - “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. Courts have held that an error is essentially a mistake. That mistake, however, must fall within the ambit of Section 74 of the [Law of Succession Act](#) and Rule 43 of the Probate and Administration Rules. Under the [Law of Succession Act](#) as stated above, rectification is appropriate only where the grant contains:
 - a. Errors in names or descriptions of persons or things;
 - b. Errors in setting forth the time and place of the deceased’s death;
 - c. Errors regarding the purpose of a limited grant.
7. In my view, the scope of the above provisions is that if the mistake is clerical, such as a misspelling, incorrect date, or description, rectification is the suitable remedy. Rectification does not allow substantive changes such as the inclusion of new assets or beneficiaries or redistribution of the estate. In re Estate of John Omae Nyangweso (Deceased) KEHC 4924 the court held that rectification is limited to correcting errors in names, descriptions, or minor clerical details. Introducing new assets or beneficiaries must be done by applying for review or seeking a fresh confirmation of grant. In particular, the Honourable Court stated as follows: -

“Rectification of a grant is limited to correction of errors in names or descriptions, or in setting out the time and place of the deceased’s death, or the purpose in a limited grant... Notably, inclusion of omitted beneficiaries or assets does not fall within the scope of rectification and must be canvassed through review or fresh confirmation proceedings.”
8. In the Matter of the Estate of Geoffrey Kinuthia Nyamwinga (Deceased) [2013] KEHC 3745 (KLR), Justice W. Musyoka found that correcting clerical errors in property descriptions falls under



rectification, but including omitted assets requires an application for review under Order 45 Civil Procedure Rules, as imported by Rule 63. The Court stated as follows: –

“A grant and a certificate of confirmation of grant are court orders taking the form of a certificate. The grant is made after the court allows the petition for a grant of representation, whether it be of letters or of probate. A certificate of confirmation of grant is issued following a successful application for confirmation of the grant. The two are not pleadings, and therefore the principles which govern their rectification are not those applying to amendment of pleadings but those that apply to amendment of court orders.

A court order made by a civil court can only be amended through a review application, and not through an application for amendment of pleadings. The Law of Succession Act does not provide for amendment of pleadings in succession causes, but it does provide amendment of grants. This is through either Section 74 of the Law of Succession Act to the extent provided in that provision, or through a review application through Order 45 of the Civil Procedure Rules. Order 45 was formerly Order XLV, which is one of the provisions of the Civil Procedure Rules imported into succession practice through Rule 63 of the Probate and Administration Rules.

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 – the omission of the two properties from the confirmation application and the certificate of grant respectively.”

9. In this instant case, the Applicant stated that a Grant of Letters of Administration was issued in this case and confirmed on the 18th March 2014. The Applicant also stated that L.R NO. Eldoret/MUN/Block 4/112 forming part of the Estate of the deceased was erroneously omitted in the cause pleadings. To me, this will bring substantive changes in the Certificate of Confirmation of Grant being the inclusion of new assets of the intestate estate of the deceased. From the scope of section 74 of the Law of Succession Act cited elsewhere in this ruling, rectification is only a remedy on matters such as when the mistake is clerical, such as a misspelling, incorrect date, or description of the property of the intestate estate of the deceased. The changes being initiated by the Petitioner/Applicant herein does not fall in the limp of rectification of a grant but on the review of the certificate of Confirmation of Grant. Bearing this in mind, it is thus my considered view that the applicant ought to have approached the court under order 45 of the Civil Procedure Rules as imported by Rule 63 of the Probate and Administration Rules. A review under Order 45 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. This thus fits this instant case.
10. This Honourable Court has carefully considered the Notice of Motion dated 18th September 2025, together with the supporting affidavit sworn by Zipporah J. Kirui seeking the rectification of the Grant of Letters of Administration issued on 18th March 2014 to include L.R No. Eldoret/MUN/Block 4/112 as part of the intestate estate of the late Samson Marie Seroney. From the Certificate of Lease presented before this Honourable Court, it is evident that the parcel of land known as L.R



No. Eldoret/MUN/Block 4/112 is under the proprietorship of John Kiplagat Kibogy, Samson Marie Seroney (deceased) and David Kipkemboi Seroney. It is not clear whether it was held in tenancy in common or joint tenancy by the said proprietors. Under the law, particularly section 91(1) & (3) of the Land Registration Act No 3 of 2012 where land is owned in common, each proprietor holds a distinct, though undivided share which is transferable or transmissible upon death. Unlike joint tenancy, tenancy in common does not confer the right of survivorship hence, upon the death of one co-owner, their respective share in the property forms part of their estate and devolves in accordance with the Law of Succession Act.

11. Accordingly, in the instant matter, it is the duty of the Administrators of the intestate estate of the late Samson Marie Seroney to ascertain and determine the deceased's share in the said property as reflected in the title document being the Certificate of Lease. Only that defined fractional share belonging to the deceased be it one-third, one-half or as otherwise established by evidence shall form part of the intestate estate available for distribution among the beneficiaries. In view of the foregoing and in the interests of justice, the following orders shall abide: -
 - a. An order be and is hereby made that the Administrators do establish through the legal framework of the law whether the share in LR No Eldoret/MUN/Block 4/112 automatically devolved to the co – joint tenants or is a free share capable of being reverted to the estate. This is the legal question in this instant case which has not been unpackaged by the Administrators.
 - b. That the matter shall be mentioned for a Status Conference on 13th November 2024 to confirm compliance with order (a) above.
 - c. That costs of this application shall be in the cause.
 - d. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 15TH DAY OF OCTOBER 2025

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R. NYAKUNDI
JUDGE

