



**In re Estate of John Kipkemoi (Deceased) (Succession Cause
28 of 2018) [2025] KEMC 130 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEMC 130 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
SUCCESSION CAUSE 28 OF 2018
PA NDEGE, SPM
JUNE 5, 2025
IN THE MATTER OF JOHN KIPKEMOI (DECEASED)**

IN THE MATTER OF

**DAVID NGETICH CHERUIYOT 1ST PETITIONER
DENNIS KIPRUTO NGETICH 2ND PETITIONER**

RULING

1. Before the court is a Summons Application dated 24th October, 2024 where the Applicants prays an order of rectification of the Certificate of the Grant of Letters of Administration issued to David Ngetich Cheruiyot & Dennis Kipruto Ngetich in this matter on the 13th July, 2021 by capturing the following asset parcel of land known as Mau Summit/sachangwani Block 1/20 (Chesoni) which were omitted and/or not included. They then propose a fresh mode of distribution to include the parcel hereinabove. The applicants further pray that the costs of thus application be provided for.
2. The application is premised upon Section 74 of the *Law of Succession Act*, Cap 106 and rules 43 and 73, of the *Probate and Administration Rules*. It is supported by the annexed joint affidavit of the applicants.
3. Whereas the Application is unopposed; as a court of law, I have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. As held by the Supreme Court of Kenya in *Gideon S. Konchellah v Julius L. Sunkuli & 2 others* [2018] eKLR, it behoves the court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The court is thus under a duty to look at any points of law, such as any jurisdictional impediment, which might render the application a non-starter, or whether there is sufficient material that might enable the court to exercise its discretion in favour of an applicant, just like in case of a formal proof proceeding where the respondent or defendant fails to answer to claim in a main suit.



4. I have considered this summons for rectification of Grant, the Affidavits filed in support thereof and the grounds on its face. Rectification of Grants is provided for by section 74 of the Law of Succession Act, Cap 160, Laws of Kenya which 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.

5. Rule 43(1) of the Probate and Administration Rules states as follows: -

43(1) 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 of descriptions of any person or thing or as to the time or place of the 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 issued.

6. Rectification is allowed in order to correct a mis-description of a property or to correct a name which has not been fully or properly described in the Grant. It is not, meant to add a new asset or redistribute an estate. Thus the prayers sought for herein are therefore not available via a rectification.

7. In re Estate of Charles Kibe Karanja (Deceased) 2015 eKLR the Court held as follows: -

If... there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be affected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant.” (own emphasis)

8. I thus do hereby dismiss the Application for being unavailable via this forum.

DATED IN NAKURU THIS 05TH DAY OF JUNE, 2025.

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ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Applicant's Counsel: n/a

Applicants: n/a

