

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE NO. 273 OF 2001

**IN THE MATTER OF ESTATE OF KIPTOO YAMA
DECEASED**

Coram: Justice R. Nyakundi

Ngala & Company Advocates

RULING

1. Before the Court are Summons for Rectification and/or amendment of Grant brought under Order 45 Civil Procedure Rules, Section 74 of the Law of Succession Act CAP 160, Rules 43 and 73 of the Probate and Administration Rules where the Applicant seeks for the following orders:
 - (a) That the Amended Certificate of Confirmation of Grant issued on 24th November 2021 to the said Stanley Kiprop Limo be further rectified and amended as provided by Rules 43(1) and 73 of the Probate and Administration Rules.
 - (b) That other owners by purchase of the land parcel Soy/Kipsangui Block 5 (Kipsangui) 56 who bought the land from the deceased have been identified and thus there's necessity for the Certificate of confirmation of Grant to be adjusted accordingly.
 - (c) Costs of this application be provided for.
2. Which application is premised on the following grounds:
 - (a) The Applicant is the Administrators to the Estate of the deceased herein in his capacity as son to the deceased.
 - (b) At the time of Petition and confirmation of Grant, the land parcel Soy/Kipsangui Block 5 (Kipsangui) 56 was distributed fairly among the children of the deceased and two (2) owners by purchase.
 - (c) Recently the family has been able to identify all other purchasers who bought several portions out of the land parcel

Soy/Kipsangui Block 5 (Kipsangui) 56 who bought the land from the deceased prior to his death.

(d) The above information was unavailable to the administrator and family at the time of petition and confirmation of Grant, and thus their omission was awry inadvertent and unintended.

(e) This Honourable Court is vested with unfettered jurisdiction and/or powers to amend the certificate of confirmation of grant issued to the Administrators herein, accordingly which power we urge it so to exercise.

(f) This application has been filed promptly and in the best interest of justice to finalize distribution of the Estate.

3. The application is supported by a supporting affidavit sworn by Stanley Kipro Limbo who deposed as follows:

(a) That I am the Administrator to the Estate of the late Kiptoo Yama to whom these proceedings relate, having been appointed by this Honourable court on 24th November 2021.

(b) That the Grant of Letters of administration to the Estate was confirmed on 13th June 2011 and a certificate of confirmation of grant was issued on 30th June 2011.

(c) That among the properties forming part of the estate of the deceased is the land parcel soy/Kipsangui Block 5 (Kipsangui) 56 which property was included in these proceedings.

(d) That at the time of confirmation of grant, the land parcel Soy/Kipsangui Block 5 (Kipsangui) 56 was distributed among the sons of the deceased and two purchasers.

(e) That the deceased did not inform us that there were other purchasers to the said land parcel Soy/Kipsangui block 5 (Kipsangui) 56 other than the aforementioned two.

(f) That their omission was thus awry, inadvertent and unintended in the circumstances.

(g) That after identifying the other purchasers I was advised by my advocate on record to apply to the court for a rectification of grant to include their names.

- (h) That all dependents are aware of this intended amendment and have consented to the same as per the attached consent on distribution.
- (i) That it is therefore necessary that the certificate of confirmation of grant be rectified to include the above changes.
- (j) That in absence of a rectified certificate of confirmation of grant, it is impossible to complete distribution and accession of the Estate of the deceased.
- (k) That this summons for rectification has been filed promptly and in utmost good faith.
- (l) That I confirm that the above changes to the certificate of confirmation of grant shall not prejudice the other beneficiaries in any way.

DECISION

1. This summons as filed seeks rectification of grant under Section 74 of the Law of Succession Act and further by dint of the import of Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. In the first instance, based on the law of Succession Act, the courts have the power to rectify the grant of letters of administration to correct errors or mistakes apparent on the face of the record to ensure clarity, originality, particulars of names of the beneficiaries and description of the assets of the intestate estate. The most common grounds for rectification include, typographical mistakes, the omission of assets, or beneficiaries, or in accurate description of any material factor relevant in the given certificate of confirmation of grant. In addition under rule 43 of the Probate and Administration rules, it expounds on the procedure in which an administrator may apply for rectification of grant of letters of administration and is therefore a formal application required as per the procedure of law.
2. There are avalanche of decisions out there in our repository of case law in which these provisions have been interpreted and now they fall under the category of settled law. That can be appreciated in the following cases: In **Re Estate of John Gitau Gathirimu alias**

J.G Gathirimu alias Major J.G Gathirimu (Deceased (2024) eKLR *the administrator applied for a rectified grant to correct various aliases for the deceased's name. The original grant in succession cause F112 of 2021 was issued in Nakuru. The High court issued a rectified grant to reflect the correct and different names used by the deceased. The case demonstrates the courts readiness to amend the grant where there is a genuine error in the deceased, name or description.*

In **Re- Estate of Willies Murigu Muya (Deceased) (2022) eKLR.** *The administrator of the decease's estate in Mombasa applied to rectify the certificate of confirmation of grant. She claimed that certain assets (Unservd land and Safaricom shares) were inadvertently omitted during the initial typing of the certificate. The administrator successfully proved that assets were omitted due to a clerical error. The court ordered the rectification of the grant to include the missing assets, which were to be jointly owned by the beneficiaries.*

In the Matter of the Estate of Anicetus Joseph John Mutaboyerwa (2024) eKLR (Tanzania, for illustrative purpose) *In a case with similar principles in Tanzania an applicant sought to rectify a grant by adding new names for the deceased, which were not on the original petition. The court found that this was not a simple error warranting rectification. Rectification is for correcting existing errors, not for adding new information that was not originally pleaded. The court dismissed the application for being improperly filed. This case illustrates the limits of rectification- It can only be used for correcting minor mistakes, not for substantially altering the grant*

3. It is also trite that certificate of confirmation of grant can be reviewed under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. I so far as Order 45 Rule 1 of the Civil Procedure Rules is concerned, the law provides as follows:
Application for review of decree or order (order 45, rule 1)
(1) Any person considering himself aggrieved: (a) by a decree or order from which an appeal is allowed, but from which no appeal

has been preferred or (b) by a decree or order from which no appeal is hereby allowed. And who from the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason desires to obtain a review of the decree or order may apply for a review of judgement to the court which passed the decree or made the order without unreasonable delay.

2. To whom application for review may be made (Order 45 rule 2) *(1) An application for review of a decree or order of a court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule1, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree, or made the order sought to be reviewed. (2) If the judge who passed the decree or made the order is no longer attached to the court, the application may be heard by any other judge who is attached to that court at the time the application comes for hearing. (3) If the judge who passed the decree or made the order is still attached to the court but for review is lodged, the application may be heard by such other judge as the Chief Justice may designate.*

- 4.** In matters of review, of a ruling or a judgement, the same is maintainable only if there is an error apparent on the face of the record, and the Applicant has received certain evidence or material which he or she could not bring to the notice of the court at the time when the hearing of the original case was in progress. That is the very reason why under Order 45 Rule 1 of the CPR a judgement or ruling may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evidence and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record

justifying the court to exercise its power of review under Section 80 of the Civil Procedure Act and order 45 Rule 1 of the CPR.

5. In applying the law to the facts of this case, there are detailed grounds on the face of the summons for rectification dated 3.3. 2025 as supported by an affidavit one Stanley Kiprof Limo which persuades this court to invoke the provisions of Section 74 of the Law of Succession Act, Rule 73(1) of the Probate and Administration Rules, Section 80 of the Civil Procedure Act, and Order 45 rule 1 of the Civil Procedure rules to review the certificate of grant of representation and adopt the following consent which will subsequently in a way impact the original grant laying down the distribution matrix. Therefore, the rectification/amendment shall comprise of the following details:

NAME	DESCRIPTION OF PROPERTY	SHARE OF HEIRS
PAUL KIPKORIR LEL	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	3.9ACRES
SALINA JEMELI KIMAIYO	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	0.77ACRES
SYLAS KIPRUTO BOEN	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	5.52ACRES
ELIUD KIPYAMA TOO	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	3.43ACRES
STANLEY KIRWA TOO	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	3.81ACRES
WILLY KIPCHUMBA TOO	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	2.22ACRES
WILSON KIPROP TOO	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	1.34ACRES
WILLY KIPCHUMBA TOO	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	0.3ACRES
WILSON KIPROP TOO	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	1,1 ACRES
JOASH KIPTABOT BIRECH	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	5.0ACRES
JANE JELAGAT TIO	SOY/KIPSANGUIBLOCK	3.20ACRES

	5(KIPSANGUI) 56	
ELIKANA KIPCHUMBA BIWOTT	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	2.22ACRED
PHILIP KIPRUTO CHIRCHIR	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	1.96ACRES
MELLEN NYAKERARIO MONYORO	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	1.45ACRES
JOSEPH KIMARU YEGO	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	1.40ACRES
ISAAC KIPRONO KIPCHUMBA	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	1.00ACRES
MARY JEBET	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	1.00ACRES
ABDUL KIRWA BYAMA	SOY/KIPSANGUIBLOCK 5(KIPSANGUI) 56	0.50ACRES

6. From this perspective, the summons for rectification/amendment and in a way review jurisdiction, is meritorious and therefore the substratum of the certificate of confirmation of grant duly issued to the administrators of this court shall be effectively amended in consonant with the above detailed distribution of the intestate estate to the named beneficiaries. Costs of this application be in the cause. The legal counsel shall therefore generate the amended/rectified grant for endorsement and signature of this court.

GIVEN UNDER MY HAND THE SEAL OF THIS COURT THIS 29TH DAY OF OCTOBER, 2025

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R. NYAKUNDI
JUDGE