



REPUBLIC OF KENYA



**In re Estate of Kiplagt Mutung (Deceased) (Succession Cause
33 of 2020) [2025] KEHC 16644 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16644 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 33 OF 2020
RN NYAKUNDI, J
NOVEMBER 13, 2025
IN THE MATTER OF THE ESTATE OF THE LATE KIPLAGT MUTUNG**

IN THE MATTER OF

**ESTHER JEROTICH KIPRONO 1ST PETITIONER
SAMWEL KIPTOO 2ND PETITIONER
JACKSON KIPKOSGEI KIPLAGAT 3RD PETITIONER**

*(Coram: Before Justice R. Nyakundi M/s Miyiinda & Co. Advocates
M/S Nyekwei & Co. Advocates M/S J. K. Kiplagat & Co. Advocates)*

RULING

1. Before this Court is the ex-parte Chamber Summons dated 29th day of October 2025 brought pursuant to Section 74 of the *akn ke act 1972 14 Law of Succession Act* and Rule 44 of the Probate and Administration Rules seeking the following orders:
 - a. Spent.
 - b. That the amended certificate of confirmation of grant dated 9 5 2025 be further rectified and or amended.
 - c. Costs be in the cause.
2. Which application is premised on the grounds inter alia:
 - a. The rectification now sought is only in respect of L.R No. Uasin Gishu Kipkabus 11565 measuring 410 acres.
 - b. The rectification only effects the name of the deceased as appears in the certificate of title as registered under the now repealed Registration of Titles Act (R.T.A)



- c. The rectification sought only effects some 3 individuals and no other beneficiaries.
 - d. The rectification has become necessary because some beneficiaries have sold their shares to others and changes need to be affected before new sub-divisions are prepared in Nairobi upon surrender of the original title.
 - e. The rectification is sought in good faith without affecting other beneficiaries.
3. In support of the application is the supporting affidavit of Sarah Njeri Mutung who deposed as follows: -
- a. That I am one of the administrators of the estate of Kiplagat Mutung alias Kiplangat Arap Mutung, deceased.
 - b. That vide the amended Certificate of Confirmation of a Grant dated 9 5 2025, the various beneficiaries made some changes to their shares of the estate and the Grant was rectified accordingly.
 - c. That this time again, some beneficiaries have made certain changes which necessitate the Grant to be further amended.
 - d. That when the transfer under Certificate of Title under the repealed Registration of Titles Act (R.T.A) was done on 18 11 1965 to my late father, his name was given as Kiplangat Arap Mutungu instead of Kiplagat Mutung. (see copy of title showing transfer done on 18 11 1965 entry No. 3 marked "A".)
 - e. That the persons responsible for the preparation of sub-division of the title in Nairobi have advised that the name of Kiplagat Mutung be given an 'alias' of 'Kiplangat Arap Mutungu' because that is what was entered in the transfer of 18 11 1965 aforementioned and hence the rectification of this Grant.
 - f. The other rectification is that requiring the name of Caroline Kiplagat at No. (v) to be removed from the list of beneficiaries and her share of 2 acres to be given to Mercy Jemutai Rop at No. (xiii) on the list and the share of Mercy Jemutai Rop becomes 3 acres.
 - g. That the other rectification affects No. (xxxviii) and (xxxix) on the list in the name of Rogers Kimng'etich where he initially was given 2 portions of 26 acres each but now the portion under No. (xxxix) on the list be given to Robert Kiprotich Kiptoo and the name of Rogers Kimng'etich at No. (xxxvii) on the list is rectified to read Rogers Kipngetich Kiptoo.
 - h. That what I have stated herein above reflects the true position on the ground and the interests of the beneficiaries.
 - i. That I pray that the amended Certificate of Confirmation of a Grant dated 9 5 2025 be further rectified amended.

Analysis and Determination

4. I have read and considered the ex-parte summons and the annexed affidavit in support of the same. There is one sole issue manifest for determination as follows;
- Whether the ex-parte summons for rectification is merited?



5. The applicable law relating to the application at hand which involves rectification of grants is provided for in Section 74 of the *akn ke act 1972 14 Law of Succession Act*.

'74. 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.'

6. In addition to Section 74 of the *akn ke act 1972 14 Law of Succession Act*, Rule 43 (1) of the Probate and Administration Rules, by which the substantive provision of Section 74 of the *akn ke act 1972 14 Law of Succession Act* is enforced, instructively provides:

'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 or descriptions of any person or thing or as to 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.'

7. In essence, these provisions mean that the Court may correct mistakes only when they concern details such as the names, descriptions, or the stated time or place of the deceased's death. This means the Court's authority to make rectifications is confined to those specific circumstances and does not extend to a general power to amend any type of error.

8. From the facts of this ex-parte summons and the supporting affidavit, the deponent explains that:

- a. The deceased's name was erroneously entered as Kiplangat Arap Mutungu in the Certificate of Title issued on 18th November 1965 under the repealed Registration of Titles Act (RTA) instead of Kiplangat Mutung, the correct name. The rectification will therefore include an alias to align with the registered title to avoid future conveyancing challenges.
- b. Secondly, the name of Caroline Kiplangat listed at No. (v) should be removed and her 2-acre share transferred to Mercy Jemutai Rop No. (xiii), thereby increasing Mercy's entitlement from 1 acre to 3 acres.
- c. Thirdly, the entry under Rogers Kimngetch No. xxxviii and xxxix should be amended such that the second portion of 26 acres under No. xxxix be reallocated to Robert Kiprotich Kiptoo and Rogers' name rectified to Rogers Kipngetch Kiptoo.

9. From the above, where a proposed amendment of a Grant cannot be dealt with under the provisions of Section 74 of the *akn ke act 1972 14 Law of Succession Act*, the applicant ought to approach the Court under Order 45 of the Civil Procedure 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. It is my considered view that the Applicant in this case should have moved the Court under this Provisions of Order 45 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. This also applies to the instant case herein.

10. Rule 63 of the Probate and Administration Rules governs the review of the decisions of a Probate Court and provides as follows: -

"63. Application of Civil Procedure Rules and High Court (Practice and Procedure) Rules



1. Save as is in the Act or in these Rules otherwise provided, and subject to any order of the Court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.
2. Subject to the provisions of the Act and of these Rules and of any amendments thereto the practice and procedure in all matters arising thereunder in relation to intestate and testamentary succession and the administration of estates of deceased persons shall be those existing and in force immediately prior to the coming into operation of these Rules.

11. In the case of *John Mundia Njoroge & 9 Others Vs Cecilia Muthoni Njoroge & Another* [2016] eKLR, the Court cited Rule 63 of the Probate and Administration Rules and then stated as follows: -

“As stated above, the only provisions of the Civil Procedure Rules imported to the *akn ke act 1972 14 Law of Succession Act* are orders dealing with service of summons, interrogatories, discoveries, inspection, consolidation of suits, summoning and attending witnesses, affidavits, review and computation of time. Clearly, Order 45 relating to review is one of the Civil Procedure Rules imported into succession practice by rule 63 of the Probate and Administration Rules. An application for review in succession proceedings can be brought by a party to the proceedings, a beneficiary to the estate or any interested party. However, the application must meet the substantive requirements of an application brought for review set out in Order 45 of the Civil Procedure Rules.”

12. Starting with the issue for Review, Order 45 of the Civil Procedure Rules provides for three circumstances under which an order for review can be made. These circumstances can be summarized as follows;

- a. The applicant must demonstrate to the Court that there has been 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.
- b. Secondly, he must demonstrate to the Court that there has been some mistake or error apparent on the face of the record and
- c. Thirdly, an application for review can be made for any other sufficient reason.

13. On the issue of an error or mistake apparent on the face of the record, it is clear that the error the subject of the application ought to be so glaring that there can possibly be no debate about it. An error which has to be established by a long-drawn out process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. (See *Paul Mwaniki Vs National Hospital Insurance Fund Board of Management* [2020] eKLR). Similarly, the Court in *Josiah Nyaga (Civil Appeal 34 of 2021) [2023] KEHC 2054 (KLR)* held as follows;

“Courts have the discretion to allow review on three grounds; where there is discovery of new and important matter of evidence, where there is an apparent error on the face of the



record and where there is sufficient reason to do so. The application for review must be made without undue delay.”

14. Lastly on the discovery of new and important matter of evidence, the Court in *Tokesi Mambili & Others Vs Simion Litsanga* [2004] eKLR held as follows;

- i. In order to obtain a review an applicant has to show to the satisfaction of the Court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.
- ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.”

15. In the present case, the Applicant seeks rectification and or review of the amended Certificate of Confirmation of Grant dated 9th March 2025 on the basis that subsequent verification of the Certificate of Title revealed a variation in the deceased’s name as registered under the repealed Registration of Titles Act (RTA). Specifically, the title bears the name “Kiplangat Arap Mutungu” whereas all previous records and pleadings identified the deceased as “Kiplagat Mutung.” From my assessment of the above facts as deponed by the Applicant, this discovery amounts to new and significant material evidence which was not within this Honourable Court’s knowledge because;

- a. The inconsistency in the deceased’s name appearing on the original title could not have been reasonably identified earlier as it originated from a historical transfer recorded in 1965 under a now-repealed law.
- b. The discovery has a direct and substantial effect on the administration and sub-division of the estate since unresolved discrepancies in the names could impede the lawful transfer of the beneficiaries’ respective interests.
- c. The evidence is genuine and verifiable being drawn from an official land register entry, and thus provides a legitimate basis for rectifying the record without altering the substantive entitlements of the other beneficiaries.

16. Moreover, the need to capture the current ownership positions arising from subsequent sales or exchanges of shares among beneficiaries constitutes fresh developments that occurred after the earlier confirmation, thereby requiring the distribution schedule to be updated to reflect the present factual situation of the estate. Accordingly, these developments meet the legal threshold for review or rectification under Order 45 Rule 1 of the Civil Procedure Rules and Section 74 of the *akn ke act 1972 14 Law of Succession Act* as they remedy factual errors and ensure that the confirmed grant accurately reflects both the true intention of the beneficiaries and the correct legal description of the deceased’s estate. In essence, the discovery of the deceased’s alternative name on the Certificate of Title together with the subsequent adjustments among the beneficiaries provides legitimate grounds for review within the scope of Order 45 of the Civil Procedure Rules, 2010. These are not minor clerical amendments but substantial factual matters essential for the lawful and proper completion of the estate’s administration. The Court is therefore warranted in allowing the requested amendment as it upholds precision, fairness and adherence to both the *akn ke act 1972 14 Law of Succession Act* and the Civil Procedure Rules, while preserving the integrity of the estate distribution process.

17. In view of the foregoing, the following orders shall abide: -



- a. The Amended Certificate of Confirmation of Grant dated 9th May 2025 be and is hereby reviewed, rectified and or amended in the manner proposed in the annexed schedule as follows:
- a. That the deceased's name to read Kiplagat Mutung alias Kiplangat Arap Mutungu in conformity with the Certificate of Title for L.R. No. Uasin Gishu Kipkabus 11565.
 - b. That the name of Caroline Kiplagat No. (v) be removed from the list of beneficiaries and her share of 2 acres be transferred to Mercy Jemutai Rop No. (xiii), increasing her entitlement to 3 acres.
 - c. That the entry for Rogers Kimngetich No. (xxxviii) and (xxxix) be rectified such that the portion under No. (xxxix) of 26 acres is reallocated to Robert Kiprotich Kiptoo and Rogers' name is hereby amended to Rogers Kipngetich Kiptoo.
 - d. That the Further Amended and or rectified Certificate of Confirmation of Grant shall issue forthwith reflecting the above changes.
 - e. That by this ruling the Deputy Registrar do issue an amended Certificate of Confirmation forthwith.
 - f. That there shall be no order as to costs.
 - g. It is so ordered.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 13TH DAY OF NOVEMBER 2025

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R. NYAKUNDI
JUDGE

