



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of the Late Kiptarus Ngisirei (Deceased) (Probate & Administration
161 of 2014) [2025] KEHC 15960 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15960 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 161 OF 2014**

**RN NYAKUNDI, J
NOVEMBER 7, 2025**

**IN THE MATTER OF
PHILIP KIPKEMEI NGISIREI PETITIONER
*(IN THE MATTER OF THE ESTATE OF THE LATE KIPTARUS NGISIREI (DECEASED))***

RULING

1. Before this court is summons for rectification of grant brought under Section 74 of the [Law of Succession Act](#) and rule 73 of the Probate and Administration Rules seeking the following orders:
 - a. Spent.
 - b. The confirmed Grant of letters of Administration to the Estate of the Late Kiptarus Ngisirei-deceased made to Philip Kipkemei Ngisirei and confirmed on the 15th February 2016 be rectified by amending the mode of distribution.
 - c. The Honourable court do sanction the rectification by redistributing the properties as per the new proposed mode of distribution listed in paragraph 13 of the affidavit in support to the summons for rectification of grant sworn by Philip Kipkemei Ngisirei.
 - d. The new Grant of letters of administration be issued.
 - e. The new Grant of letters of Administration be immediately confirmed and a certificate of confirmed Grant be simultaneously issued.
 - f. The costs be provided for.
2. The summons is anchored on grounds enlisted as follows:
 - i. The certificate of confirmation of Grant was issued by honorable court on the 15.2.2016 to Philip Kipkemei Ngisirei



- ii. That one of the beneficiaries/dependants, Lilian Jemaiyo Ngisirei, the spouse of the Late Kiptarus Ngisirei has since died.
 - iii. That the said Lilian Jemaiyo Ngisirei had been apportioned their due share of the Estate but the same was yet to be concussively transmitted to her name before her demise
 - iv. That the now late Lilian Jemaiyo Ngisirei and Kiptarus Ngisirei were spouses hence they have common dependants/beneficiaries.
 - v. That based on their commonality in dependents/beneficiaries it would be proper, convenient and in the interest of justice that the property assigned to be distributed to her, be divided among the remaining dependents, who are her children as consented.
 - vi. That the late Lilian Jemaiyo Ngisirei has no other properties to necessitate and cause her succession as the rectification would effectively settle her estate as apportioned from her late husband estate which is the subject of this succession.
 - vii. It is imperative that the change of mode of distribution be realized by rectification to endorse the new distribution.
 - viii. That the beneficiaries/dependants have duly consented and nothing prevents the court from rectifying the confirmed grant and simultaneously confirming the same.
 - ix. That the application serves to effect just and equitable distribution of the Estate and give each dependent and beneficiary their rightful inheritance without any undue delay.
3. In further support of the application, Philip Kipkemei Ngisirei swore a supporting affidavit in which he deposed as follows:
- a. That I am an administrator and beneficiary of the deceased, being a son to the late Kiptarus Ngisirei; therefore, competent and authorized to swear this affidavit.
 - b. That the Honorable court issued me with the Grant of Letters of Administration and subsequently upon Confirmation, the Certificate of Confirmation of Grant was issued on the 15th February 2016.
 - c. That the Estate had been duly apportioned and adopted by the Court as per the mode of distribution proposed in the Summons for Confirmation of Grant dated the 19th November 2015.
 - d. That the abovementioned mode of distribution shared the Estate's asset as follows:



Beneficiary	Property Description	Block	Size
1. Peter Kipchumba Ngisirei	Kapsaret/simat (koromosio) 42	4	Whole
2. Philip Kipkemei Ngisirei	Kapsaret/simat (koromosio) 43	4	Whole
3. Eliud Kipkorir Ngisirei	Kapsaret/simat (koromosio) 44	4	16.0 Acres
4. Lillian Jemaiyo Ngisirei	Kapsaret/simat (koromosio) 44	4	6.8 Acres
5. Isaac Kipkogei Lagatp	Kapsaret/simat (koromosio) 45	4	16.0 Acres
6. Lillian Jemaiyo Ngisirei	Kapsaret/simat (koromosio) 45	4	20.0 Acres
7. Ebby Jepchirchir Ngisirei	Kapsaret/simat (koromosio) 2	4	10.0 Acres
8. Philip Kipkemei Ngisirei	Kapsaret/simat (koromosio) 2	4	1.0 Acres
9. Peter Kipchumba Ngisirei	Kapsaret/simat (koromosio) 2	4	3.0 Acres
10. Lillian Jemaiyo Ngisirei	Kapsaret/simat (koromosio) 2	4	1.1 Acres

- e. That one of the listed beneficiaries/dependants of the Estate, Lillian Jemaiyo Ngisirei, the spouse of the Late Kiptarus Ngisirei and our mother died on the 7th March 2025.
- f. That the said Lillian Jemaiyo Ngisirei had been apportioned her due share of the Estate but I, as the administrator, was underway in effecting the transmission of the dependents' shares but the same was yet to be conclusively effected as at the time of her demise.
- g. That based on their commonality in Dependants/Beneficiaries it would be proper, convenient and in the interest of justice that the property assigned to be distributed to her be divided amongst the remaining dependants, who are her children.
- h. That the now late Lillian Jemaiyo Ngisirei had no other properties other than what was due from our father and her husband Estate herein.
- i. That the rectification of the mode of distribution would effectively settle her Estate as apportioned from her late husband Estate which is the subject of this succession.



- j. That no person shall suffer any known and perceived prejudice if the mode of distribution is adopted by this Court, in fact all the dependents/beneficiaries have consented to the mode of distribution.
- k. That the proposed mode of distribution is as follows:

Beneficiary	Property Description	Size
Peter Kipchumba Ngisirei	Kapsaret/simat Block 4 (koromosio) 42	Whole
Philip Kipkemei Ngisirei	Kapsaret/simat Block 4 (koromosio) 43	Whole
Eliud Kipkorir Ngisirei Philip Kipkemei Ngisirei	Kapsaret/simat Block 4 (koromosio) 44	Joint And Equal Share
Isaac Kipkogei Lagat Ebby Jepchirchir Ngisirei	Kapsaret/simat Block 4 (koromosio) 45	Joint And Equal Share
Peter Kipchumba Ngisirei Philip Kipkemei Ngisirei	Kapsaret/simat Block 4 (koromosio) 2	Joint and equal share

- l. That there are no other issues in contention but just the rectification of the Estate share to the dependants of the Estate.
- m. That there being no other issues it is just and equitable for the Court to simultaneously issue the confirmed grant since the Estate has long been overdue and the awaiting of the statutory six months would be of no further value but in the contrary delay the dependants rightful share of the Estate properties.
- n. That it is in the interest of justice and fairness that the rectification be granted as per the proposed mode of distribution and inclusion of the left out properties.

Decision

4. Having carefully considered the summons, the supporting affidavit and the grounds enumerated, and the submissions made, the main issue for determination is whether this court should grant the orders sought by the applicant for rectification of the confirmed grant.
5. The application has been brought under Section 74 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules. Section 74 of the *Law of Succession Act* provides as follows:
6. Section 74 of the *Law of Succession Act* provides for the errors on grants of representation that may be rectified by the court. It provides: -

“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”.

7. Rule 43(1) of the Probate and Administration Rules 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 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 for such rectification through the registry and in the cause in which the grant was made.”

8. A close reading of these two provisions will show that the provisions of Section 74 and Rule 43 are extremely restricted. They permit rectification of grants in three clearly defined cases:

- “a)) errors in names and descriptions of persons or things;
- b) errors as to time or place of death of the deceased;
- c) in cases of a limited grant, the purpose for which such limited is made;”

9. In the persuasive decision of In the matter of the estate of Geoffrey Kinuthia Nyamwinga (deceased) [2013] eKLR, Musyoka J. stated that:

“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 the time or place of the 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.”

10. The court in *Kambora Mamau v Esther Nyambura Kirima* [2002] eKLR observed that:

“As I said in this court’s Succession Cause No 1086 of 1995, in the matter of the estate of Ndungu Kariuki (unreported); a certificate of confirmation of grant confers upon a beneficiary under it a beneficial interest. I stated:

“As a certificate of confirmation of grant, also referred to as a certificate of confirmation, confers upon a beneficiary under it a beneficial interest in the estate of the deceased person, where such a beneficiary subsequently dies before the executor or administrator of the estate for which the certificate of confirmation was issued transfers the resultant legal interest or title to the aforesaid beneficiary, it is not proper and lawful to proceed under rectification of that certificate of confirmation to replace the deceased beneficiary with a person other than a confirmed executor or administrator of the estate of the deceased beneficiary.”

...To get to be a confirmed executor or administrator of the estate of a deceased beneficiary, the proper procedure would be for the person aspiring to replace the deceased beneficiary to start the ball rolling in separate proceedings being a petition for the grant of probate or letters of administration in the estate of the deceased beneficiary. The aspirant will start those



proceedings either as a petitioner as well as a beneficiary or as a purely beneficiary influencing others interested to have the petition filed.”

11. Applying these principles to the instant case, it is clear that what the applicant seeks is not a mere rectification of an error in names, descriptions, or time and place of death. Rather, the applicant seeks a fundamental alteration of the mode of distribution occasioned by the death of one of the beneficiaries, Lillian Jemaiyo Ngisirei, who passed away on 7th March 2025. The applicant proposes to redistribute the share that had been apportioned to the late Lillian Jemaiyo Ngisirei among the remaining beneficiaries who are her children.
12. In its strict sense, therefore, this application does not fall within the narrow confines of Section 74 of the *Law of Succession Act*. The proper procedure ought to have been an application for review under Order 44 of the Civil Procedure Rules, which is imported into succession proceedings by Rule 63 of the Probate and Administration Rules. Order 44 of the Civil Procedure Rules allows for review 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.
13. Ordinarily, this court would decline to entertain an application brought under the wrong procedure. However, I am mindful of the provisions of Article 159(2)(d) of *the Constitution* of Kenya, 2010, which mandates that:

“In exercising judicial authority, courts and tribunals shall be guided by the following principles — justice shall be administered without undue regard to procedural technicalities.”
14. Having examined the substance of this application, I find that there are compelling circumstances that warrant the exercise of this court’s inherent jurisdiction to entertain the application notwithstanding the procedural deficiency.
15. In the circumstances, I find that this is an appropriate case for the court to exercise its inherent jurisdiction and constitutional mandate to do substantial justice. While the application has been brought under Section 74, which strictly speaking does not apply, I am satisfied that the court can, on its own motion, treat this matter as an application for review under Order 44 of the Civil Procedure Rules or invoke its inherent jurisdiction under Article 159 of *the Constitution* to grant the reliefs sought.
16. I have examined the proposed mode of distribution as set out in paragraph 13 of the supporting affidavit and find it to be reasonable, equitable, and in accordance with the principles of intestate succession. The redistribution ensures that the shares allocated to the late Lillian Jemaiyo Ngisirei devolve to her children, who are the same dependants of the estate of the late Kiptarus Ngisirei.
17. Accordingly, I make the following orders:
 - a. The confirmed Grant of Letters of Administration to the Estate of the Late Kiptarus Ngisirei-deceased issued to Philip Kipkemei Ngisirei and confirmed on 15th February 2016 is hereby reviewed and the mode of distribution amended as follows:



Beneficiary	Property Description	Size
Peter Kipchumba Ngisirei	Kapsaret/simat Block 4 (koromosio) 42	Whole
Philip Kipkemei Ngisirei	Kapsaret/simat Block 4 (koromosio) 43	Whole
Eliud Kipkorir Ngisirei & Philip Kipkemei Ngisirei	Kapsaret/simat Block 4 (koromosio) 44	Joint And Equal Share
Isaac Kipkogei Lagat & Ebby Jepchirchir Ngisirei	Kapsaret/simat Block 4 (koromosio) 45	Joint And Equal Share
Peter Kipchumba Ngisirei & Philip Kipkemei Ngisirei	Kapsaret/simat Block 4 (koromosio) 2	Joint and equal share

- b. A fresh certificate of confirmed grant reflecting the amended mode of distribution shall issue.
- c. The administrator is at liberty to proceed with the distribution and transmission of the estate in accordance with the amended mode of distribution herein.
- d. I make no orders as to costs given the nature of this matter.

18. It is so ordered.

DATED AND SIGNED AT ELDORET THIS 7TH DAY OF NOVEMBER, 2025

.....

R. NYAKUNDI
JUDGE

