



REPUBLIC OF KENYA



**In re Estate of John Kipkoech Maritim alias John Kipkoech Martim (Deceased)
(Succession Cause 148 of 2010) [2025] KEHC 15845 (KLR) (3 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 15845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 148 OF 2010
RN NYAKUNDI, J
NOVEMBER 3, 2025**

**IN THE MATTER OF THE ESTATE OF JOHN KIPKOECH
MARITIM ALIAS JOHN KIPKOECH MARTIM (DECEASED)**

RULING

1. Before this court is summons for further rectification of certificate of confirmation of grant under the provisions of law under Rule 43(1) of the Probate and Administration Rules and section 74 of the *Law of Succession Act* where the Applicant/Administrator is seeking the following orders:
 - a. That the Certificate of Confirmation of grant issued to the said Catherine Cheronko Koech on the 29th September, 2023 be rectified in a manner as per the annexed proposed further rectified certificate of confirmation of grant.
 - b. Costs be in the cause.
2. The Summons is made on the following grounds on the face of it among others;
 - a. That the rectified grant dated 29th September, 2023 has typographical errors on the part of the names of the beneficiaries and description of the properties.
 - b. That the aforesaid grant equally omitted the names of creditors.
 - c. It is vital to so rectify the confirmation of grant since it has not been implemented.
 - d. It is only fair and just to rectify the certificate of confirmation of grant.
3. The application is further grounded on the annexed affidavit of Catherine Jerono Koech who deponed as follows:
 - a. That I am the administrator of the deceased's estate pursuant to grant of letters of administration issued to me on 28th February, 2012.
 - b. That at the time of his death the deceased left behind assets in terms of the schedule and beneficiaries to the certificate of confirmation of grant annexed hereto and marked "CCK1".



- c. That the rectified grant dated 29th September, 2023 has typographical errors on the part of the names of the beneficiaries and description of the properties.
- d. That the aforesaid grant equally omitted the names of creditors.
- e. That Annexed herewith and marked "CJK 2-5" are copies of allotment letters dated 28th November, 2007, 17th December, 2007, Copy of my National Identity Card and the rectified grant dated 29th September, 2023.
- f. That I pray that certificate of confirmation of grant of letters of administration intestate be rectified to reflect the correct position as prayed.
- g. That the other beneficiaries herein have no objection to this application.
- h. That I now swear this affidavit in support of the application now before this Honourable Court.

Analysis and Determination

4. The law applicable in the rectification of grants is section 74 of the *Law of Succession Act* as read with Rule 43 of the Probate and Administration Rules. Specifically, section 74 provides as follows;

74. Errors may be rectified by court

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.

5. On the other hand, Rule 43(1) of the Probate and Administration Rules also provides as follows:

'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.'

6. Rectification of a grant of Letters of Administration is therefore limited to matters set out under section 74 of the *Law of Succession Act*. Under this provision, rectification of grant deals specifically with correction of error which the court may order without changing the substance of the grant. This includes errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. An error which is visualized under the Section is a mistake which may occur on the face of the grant like typing errors in names of persons or the things. A rectification seeking to include properties which were not in the schedule of the assets when filing the cause and not included in the grant may not fit in the matters provided under Section 74 of the Act.

7. The court in *Re Estate of Charles Kibe Karanja (Deceased)* [2015] eKLR while interpreting section 74 of the *Law of Succession Act* elaborated as follows:

'From the wording of Section 74, it is plain that the same was not tailored to for amendment of such documents as certificates of confirmation of grant, but rather of grants of representation themselves, be they full or limited, confirmed or not. A party wishing to have rectified or altered or amended a certificates of confirmation of grant, need not approach the court through Section 74 of the *Law of Succession Act*, for the reasons that I have given above; rather they ought to apply for review of the orders made upon



the application for confirmation of grant, where the alterations sought are fundamental; or for amendment of the certificate under Rule 73 of the Probate and Administration Rules to address minor errors or mistakes in the body of the certificate. A certificate of confirmation of grant is by its nature a formal order extracted from the orders made by the court on the application for confirmation of grant. If a party wishes to have the assets of the estate redistributed or 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 effected without touching the orders made by the court at the distribution of the estate. Consequently, such changes cannot and should be effected through a mere amendment of the certificate of confirmation of grant.'

8. From the above provisions, I take note that 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 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. The Applicant in this case should have moved the court under the provisions of Order 45 of the Civil Procedure Rules 2010 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.

9. Review of decisions of a probate court is governed by Rule 63 of the Probate and Administration Rules, which 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.

10. In *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 *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.”

11. Starting with the issue for Review, Order 45 provides for three circumstances under which an order for review can be made as summarized below: -
 - a. To be successful, 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, the Applicant must demonstrate to the court that there has been some mistake or error apparent on the face of the record
 - c. Thirdly, an application for review can be made for any other sufficient reason.
12. 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. The Court of Appeal when addressing the issue of discovery of new evidence as ground for allowing a review application had the occasion to pronounce itself in *Rosa Kaiza Vs Angelo Mpanju Kaiza* [2009] eKLR where the court quoting from a commentary by Mulla on similar provision of the Indian Civil Procedure Code 15th Edition at page 2726 stated;

“Application on this ground must be treated with great caution and as required by Rule 4 (2) (b) the court must be satisfied that the materials placed before it in accordance with the formalities of the law do prove the existence of the facts alleged. Before a review is allowed on the ground of a discovery of new evidence, it must be established that the applicant had acted with due diligence and that existence of the evidence was not within his knowledge; where review was sought for on the ground of discovery of new evidence but it was found that the petitioner had not acted with due diligence, it is not open to the court to admit evidence on the ground of sufficient cause. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made.”
13. I have considered the affidavit evidence and annexures filed by the Applicant, the proposed further rectified certificate of confirmation of grant annexed to the summons and the relevant statutory provisions. The salient findings are that the Applicant was validly granted letters of administration and obtained a certificate of confirmation dated 29th September 2023. The certificate as presently worded contains typographical errors in the names of beneficiaries and inaccurate descriptions of certain estate parcels when compared with the original allotment letters relied upon by the Applicant. Moreover, the Applicant has produced the allotment letters dated 28th November 2007 and 17th December 2007 which identify parcels Nairobi Kiambu/Dandora 81391/290 and Nairobi Kiambu/Dandora 81391/291 respectively and which show the corresponding new survey numbers as 489 and 488. The discrepancy between the allotment letters and the wording of the certificate is evident on the face of the documents filed in the record before this Honourable Court.
14. From the above findings, this Honourable Court is satisfied that these discrepancies amount to errors apparent on the face of the record within the meaning of Order 45 Rule 1. They are clerical and factual



misdescription that do not alter the substantive rights of beneficiaries but must be corrected to ensure accuracy in the administration of the estate. The Court further finds that the omission of creditors' names in the confirmed grant constitutes other sufficient reason for review. Creditors are recognized under section 83(d) and (e) of the Law of Succession Act as rightful claimants on the estate.

15. In view of the foregoing, the following orders shall abide;

- a. That the Certificate of Confirmation of Grant issued on 21st January 2013 and rectified on 29th September 2023 be and is hereby reviewed and further rectified.
- b. That the administrators of the intestate estate of the late John Kipkoech Maritim alias John Kipkoech Martim shall, within ninety (90) days from the date hereof complete the process of transmission of all the assets of the estate to the respective lawful beneficiaries in accordance with the confirmed grant and the Law of Succession Act.
- c. That the matter shall be mentioned for a Status Conference on 16th January 2026 to confirm compliance with the orders above.
- d. A Further Rectified Certificate of Confirmation of Grant shall be generated by the Deputy Registrar of the High Court with the following schedule of the distribution matrix;

Schedule

Beneficiary	Description Of Property	Shares
Petrolina Jerotich Maritim	Kitale Municipality Block 8/59	Whole
Catherine Jerono Koech	Eldoret Municipality Block 21 (Kingongo)/3231	Whole
Catherine Jerono Koech	Turbo Plot No. 19 (sft)	Whole
Joyce Muthoni Ndirangu	Nairobi Kiambu/ Dandora/290 (New Survey No. 489)	Whole
Joseph Kipchumba Koech	Nairobi Kiambu/ Dandora/81391/348	Whole
Wilson Kimeli Maritim	Nairobi Kiambu/ Dandora/81391/349	Whole
Ezekiel Huho Kisoso	Nairobi Kiambu/ Dandora/291 (New Survey No. 488)	Whole
Catherine Jerono Koech	Shares at Safaricom I.P.O	Whole

- e. There shall be no orders as to the costs of this application
- f. Orders accordingly



DATED, SIGNED AND DELIVERED AT ELDORET THIS 3RD NOVEMBER DAY 2025

.....

R. NYAKUNDI

JUDGE

