



**In re Estate of the Late Cherwon Arap Maritim alias Chewon Martim  
alias Chemwon Arap maritim Maru (Deceased) (Succession Cause  
E112 of 2022) [2025] KEHC 17915 (KLR) (2 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 17915 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE E112 OF 2022  
RN NYAKUNDI, J  
DECEMBER 2, 2025**

**IN THE MATTER OF**

**JULIUS KIPTARBET TOO ..... 1<sup>ST</sup> APPLICANT**

**PHILEMON KIPKOECH ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. What is pending before this Court for determination is Summons for Amendment of Certificate of Confirmation of Grant brought pursuant to sections 47 and 74 of the Law of Succession Act and Rules 43, 63 & 73 of the Probate and Administration Rules dated 24<sup>th</sup> September 2025 in which the Applicants are seeking the following orders: -
  - a. That this Honourable Court be pleased to further amend the Amended Certificate of Confirmation of Grant issued to JULIUS KIPTARBEI TOO and Phillemane Kipkoech on 12<sup>th</sup> of June 2025 to include the following parcels of land and they be distributed to the beneficiaries as follows: -
    - i. Eldoret Municipality/Block 21 (King'ong'o)/5494 to be distributed to Julius Kiptarbet Too and Phillemane Kipkoech.
    - ii. Eldoret Municipality/Block 21 (King'ong'o)/5495 to be distributed to Julius Kiptarbet Too and Phillemane Kipkoech.
    - iii. Eldoret Municipality/Block 21 (King'ong'o)/5496 to be distributed to Julius Kiptarbet Too and Phillemane Kipkoech.
    - iv. Eldoret Municipality/Block 21 (King'ong'o)/5497 to be distributed to Julius Kiptarbet Too and Phillemane Kipkoech.



- v. Eldoret Municipality/Block 21 (King'ong'o)/2192 to be distributed to Julius Kiptarbet Too and Phillemon Kipkoech.
        - b. That the name of one of the beneficiaries which was erroneously indicated as Wangare Mwaura under section B, paragraph 24 page 15 of the Certificate of Confirmation of Grant be amended to read Wangare Mwaura Henry as per her identification card.
        - c. That the Certificate of Confirmation of Grant be amended to correct the description of the parcel of land known as Eldoret Municipality/Block 21 (King'ong'o)/2236 that was distributed to Pamphily Bruno Mulimato indicate the correct parcel being Eldoret Municipality/Block 21 (King'ong'o)/4339 and the same be distributed to him.
2. The Application is made on the following grounds on the face of it among others: -
  - a. That at the time of applying for letters of administration the above parcels were not within the knowledge of the Administrators and as a result they were erroneously omitted from the list of assets.
  - b. That the said parcels form part of the assets of the Estate of the deceased as they are registered in the name of the late Cherwon Arap Maritim.
  - c. That the name of one of the beneficiaries which was erroneously indicated as Wangare Mwaura under section B, paragraph 24 page 15 of the certificate of Confirmation of Grant be amended to read Wangare Mwaura Henry as per her identification card.
  - d. That the parcel number distributed to one Pamphily Bruno Wandera Mulimawas erroneously indicated as Eldoret Municipality/Block 21 (King'ong'o)/2236 under section A, paragraph 1, page 13 of the Certificate of Confirmation of Grant but instead should read as parcel number Eldoret Municipality/Block 21 (King'ong'o)/4339.
  - e. That the omission was not intentional but an oversight that needs rectification to ensure proper administration and distribution of the Estate.
  - f. That all family members have been made aware of this and no one objects to the said amendments.
3. The Application is supported by the annexed affidavit sworn by the Applicants herein who deponed as follows: -
  - a. That we are the administrators of the Estate of the late Cherwon Arap Martimalias Cherwon Martimalias Cherwon Arap Maritim Maru(deceased).
  - b. That the amended Certificate of Confirmation of Grant was issued on 12<sup>th</sup> June 2025.
  - c. That at the time of applying for the letters of administration, certain parcels of land were not within our knowledge and as a result, they were erroneously omitted from the initial list of assets.
  - d. That the omitted parcels are:
    - i. Eldoret Municipality/Block 21 (King'ong'o)/5494
    - ii. Eldoret Municipality/Block 21 (King'ong'o)/5495
    - iii. Eldoret Municipality/Block 21 (King'ong'o)/5496



- iv. Eldoret Municipality/Block 21 (King'ong'o)/5497
  - v. Eldoret Municipality/Block 21 (King'ong'o)/2192
  - e. That the said parcels form part of the assets of the Estate of the deceased as they are still registered in the name of the late Cherwon Arap Maritim.
  - f. That the name of one of the beneficiaries which was erroneously indicated as Wangare Mwaura under section B, paragraph 24 page 15 of the Certificate of Confirmation of Grant be amended to read as follows, Wangare Mwaura Henry.
  - g. That the parcel number distributed to one Pamphily Bruno Mulimawas erroneously indicated as Eldoret Municipality/Block 21 (King'ong'o)/2236 under section A, paragraph 1 page 13 of the Certificate of Confirmation of Grant be amended to read as follows: Eldoret Municipality/Block 21 (King'ong'o)/4339.
  - h. That we pray that the Certificate of Confirmation of Grant issued on 12<sup>th</sup> June 2025 be amended to include the said parcels as prayed for in the application.
  - i. That we further pray for the correction of the name of Wangare Mwaura to read Wangare Mwaura Henry.
  - j. That the omission of these parcels was not intentional but was an oversight that requires rectification to ensure proper administration and distribution of the estate.
  - k. That we further pray for the correction of the description of the parcel number of Pamphily Bruno Mulimaread Eldoret Municipality/Block 21(King'ng'o)/4339.
  - l. That all family members have been made aware of this application and we confirm that no one objects to the purchasers and their respective shares being included in the Certificate of Confirmation of Grant.
4. The Summons is not opposed.

#### **Analysis and Determination**

5. I have read and considered summons for amendment of the Certificate of Confirmation of Grant and the annexed affidavit in support of the same. The only issue for determination by this Honourable Court is;

#### **Whether the Applicants have established a proper basis to further amend the Amended Certificate of Confirmation of Grant**

6. The legal framework governing the rectification of Grants is provided for in section 74 of the [Law of Succession Act](#) which provide as follows: '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.' Further to the above provision, Rule 43 (1) of the Probate and Administration Rules by which the provisions of section 74 of the [Law of Succession Act](#) are enforced buttresses the issue of rectification of Grant and states 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.'

7. From the reading of the above provisions, it is crystal clear that rectification of Grants is limited to corrections of mistakes and/or errors in terms of 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. I have looked at the Court record and the evidence before the court is that: The five parcels now sought to be included are registered in the name of the deceased and therefore prima facie form part of the estate. The Applicants explain that those parcels were not within their knowledge at the time of the original application and were omitted inadvertently; that the Applicants have specifically produced a Certificates of Search of the one of the parcels of land of the deceased being Eldoret Municipality/Block 21 (King'ong'o)/4339 annexed in their supporting affidavit; the proposed corrections to the beneficiary's name to read Wangare Mwaura Henryis supported by identification particulars and are plainly clerical in nature and the alleged miss-description of the parcel allocated to Pamphily Bruno Mulimashown as 2236 but said to be 4339 is explained and substantiated by the Applicants' supporting documents.
8. From my own understanding, the facts above bring substantive changes to the Amended Certificate of Confirmation of Grant issued on 12<sup>th</sup> day of June 2025 and therefore, the correct position would be amendment of the amended Certificate of Confirmation of Grant instead of rectification which is limited. It is clear 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 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 Applicants 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. Rule 63 of the Probate and Administration Rules has in pari materia imported the provisions of the Civil Procedure Rules and the *Civil Procedure Act*.
9. Order 45 Rule 1 of the Civil Procedure Rules sets down the criteria for review applications as follows: -
  1. Application for review of decree or order:
    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 judgment to the court which passed the decree or made the order without unreasonable delay.
  2. A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of



such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

10. The Honourable Courts have consistently interpreted the provisions of Order 45 Rule 1 of the Civil Procedure Rules. In *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR, the Court set out the principles to consider in the review of its own decisions. It was observed;
  - a. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
  - b. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
  - c. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
  - d. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
  - e. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
  - f. While considering an Application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
  - g. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
  - h. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
  - i. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
  - j. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.
11. The Court of Appeal in Civil Appeal No. 2111 of 1996, *National Bank of Kenya v Ndungu Njau*, remarked on review applications as follows: -

“... A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the



matter nor can it be a ground for review that the court proceeds on an incorrect expansion of the law.”

12. In *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] KEHC 6379 (KLR) the Court considered the import of some mistake or error apparent on the face of the record as captured in Order 45 of the Civil Procedure Rules. It rendered itself thus: -

“... Review is impermissible without a glaring omission, evident mistake or similar ominous error. An error which has to be established by a long-drawn 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. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by an order or review. The power of review is available only when there is an error apparent on the face of the record. I emphasize that review proceedings are not an appeal. The review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is not permissible.”

13. This Honourable Court having considered the affidavits and the annexed documents and having regard to the statutory framework and the principle summarized above, the court is satisfied that: The inclusion of Eldoret Municipality/Block 21 (King'ong'o) Nos. 5494, 5495, 5496, 5497 and 2192 is justified because those parcels are shown to be registered in the name of the deceased and were not within the knowledge of the administrators at the time letters of administration were first obtained. Their omission was therefore inadvertent and amounts to newly discovered material which is necessary to effect a correct administration and distribution of the estate. Further, the correction of the beneficiary's name from Wangare Mwaura to Wangare Mwaura Henry is a clerical error supported by identity documentation and ought properly to be corrected so that the Certificate matches the beneficiary's true identity. Moreover, the correction of the parcel number allocated to Pamphily Bruno Mulima from 2236 to 4339 is warranted on the basis of the evidence placed before the court and is necessary for efficient and proper administration of the intestate estate of the deceased.

14. Fundamentally, I take note that neither of the remaining beneficiaries of the intestate estate of the deceased have objected to the above amendment and there is nothing on record filed to that effect. It is therefore my finding that the preferred amendment to the Amended Certificate of Confirmation of Grant will not prejudice any of the beneficiaries in the intestate estate of the deceased. In view of the foregoing and in the interests of justice I grant the following orders: -

a. That the Amended Certificate of Confirmation of Grant issued to Julius Kiptarbei Too and Phillemon Kipkoech on 12<sup>th</sup> June 2025 be and is hereby reviewed and further amended in the following manner:

a. The Amended Certificate of Confirmation of Grant is hereby further amended to include the following parcels as assets of the estate and the same shall be distributed to Julius Kiptarbet Too and Phillemon Kipkoech as prayed:

- i. Eldoret Municipality/Block 21 (King'ong'o)/5494;
- ii. Eldoret Municipality/Block 21 (King'ong'o)/5495;
- iii. Eldoret Municipality/Block 21 (King'ong'o)/5496;
- iv. Eldoret Municipality/Block 21 (King'ong'o)/5497; and



v. Eldoret Municipality/Block 21 (King'ong'o)/2192.

- b. That the Amended Certificate of Confirmation of Grant is hereby further amended to correct the name shown at Section B, paragraph 24, page 15 from Wangare Mwaura to Wangare Mwaura Henry as per her National Identification Card.
- c. That the Amended Certificate of Confirmation of Grant is hereby further amended so that the parcel number allocated to Pamphily Bruno Mulima under Section A, paragraph 1, page 13 is corrected from Eldoret Municipality/Block 21 (King'ong'o)/2236 to Eldoret Municipality/Block 21 (King'ong'o)/4339.
- d. That the Administrators of the intestate estate of the deceased herein are put on notice to fast track the transmission of the estate to the lawful beneficiaries as per law established within sixty days (60) from the date hereof.
- e. That this matter shall be mentioned on 26<sup>th</sup> January 2026 for a Status Conference to confirm compliance with the aforesaid orders.
- f. The Further Amended Certificate of Confirmation of Grant shall issue forthwith reflecting the above changes.
- g. There shall be no order as to costs this being a family matter.
- h. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 2ND DAY OF DECEMBER 2025**

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**R. NYAKUNDI**

**JUDGE**

