

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO. 26 OF 2004
IN THE MATTER OF THE ESTATE OF KIPROP MAINA

ERICK KIPRUTO CHERUIYOT.....1ST
APPLICANT/BENEFICIARY

VERSUS

KIPYEGON STEPHEN
CHERUIYOT.....BENEFICIARY/1ST
RESPONDENT
HENRY KIPNGETICH
CHEPKWONY.....1ST
PETITIONER/RESPONDENT

CHARLES KIPNGENO.....2ND
PETITIONER/RESPONDENT

RULING

1. The application coming up for determination is a notice of motion dated 13th May, 2025 seeking the following orders;

(i) Spent

(ii) Spent

(iii) Spent

(iv) That this honourable court be pleased to vary, review or set aside the orders of this honourable

court of 29th February, 2024 and all consequential orders and the matter be reopened for hearing of the summons for rectification of grant dated 15th September, 2023.

(v) That the court grant any other order as it may deem fit to grant.

(vi) That costs of this application abide in the cause.

2. The application is supported by grounds on the face of it and the affidavit of **Charles Kipngeno** in support of the application sworn by the 1st **petitioner/applicant** herein and a son and beneficiary of the late Shadrack Koros

3. He states when the instant succession cause was initiated the Shadrack Koros was alive, however, he passed away before the confirmation of grant, which was issued on 21st June, 2023 after this court issued a judgement on 16th December 2022 whereby it directed that the subject property should be shared equally between the petitioner

Henry Kipngetich Chepkwony and the estate of Shadrack Koros.

4. He further states that following issuance of the confirmed grant, the 1st Respondent, Kipyegon Stephen Cheruiyot filed summons for rectification of grant dated 15th September, 2023 purporting to rectify the confirmed grant and that instead of merely rectifying minor clerical or typographical errors as permitted under Law of Succession Act and the Probate and Administration Rules, he fundamentally altered the mode of distribution of the estate and deprived some beneficiaries of their rightful share of the estate.
5. He also stated that the rectified grant issued on 29th February, 2024 not only departs from the original confirmed grant dated 21st June, 2023 but deviates completely from the court's judgment which clearly outlined the lawful beneficiaries and manner of distribution of the estate.
6. It is his statement that the rectified grant was procured through an irregular and fraudulent process and in breach of procedural and substantive legal requirements and that the

respondents are at an advanced state of executing the said rectified grant including the efforts to subdivide and transfer portions of the estate and unless this court intervenes, the beneficiaries stand to suffer irreparable harm and deprivation of their rightful inheritance.

7. He therefore urged this court to set aside the orders staying or setting aside the orders of 29th February, 2024 leading to the issuance of rectified grant and afford them a fair opportunity to respond to the summons for rectification for proper determination by this court.

8. **Henry Chepkwony, the** administrator of the estate of the deceased, filed a replying affidavit.

9. He attests that the deceased, Kiprop Maina, was survived by his children, including his daughters, Sally Kurgat and Eunice Koske, who are indisputably rightful beneficiaries under Section 29 (a) of the Law of Succession Act (Cap 160, Laws of Kenya), which unequivocally recognizes all children—whether sons or daughters—as legitimate dependants of the deceased.

10. He attests that the explicit judgment dated 16th December 2022, clearly and unequivocally recognizing Sally Kurgat and Eunice Koske as the legitimate children of the late Kiprof Maina. This judicial pronouncement affirmed their inherent and undeniable right to inherit from his estate under Section 29(a) of the Law of Succession Act.
11. He further attests that despite this clear judicial recognition, their names were regrettably and inadvertently excluded from the initial grant. This palpable error necessitated rectification under Section 74 of the Law of Succession Act, a provision explicitly designed to allow for the correction of such grave errors to prevent the perpetuation of injustice and disinheritance.
12. It is also his attestation that the rectification process was executed with absolute legality and transparency, meticulously following due process and, crucially, after service of the application and hearing notice on all parties and therefore the applicant's protestations are entirely baseless and that the applicant despite being fully and demonstrably aware of the rectification proceedings and

their implications, chose to deliberately to not avail himself in court on the day of rectification. He is therefore adamant that the attempt to now challenge the orders issued on 29th February, 2024 should be unequivocally dismissed as a disingenuous afterthought, solely intended to delay justice and prolong their unjust enrichment.

13. He reiterated that as the Administrator, he had unequivocally consented to the rectification application filed by Kipyegon Stephen Cheruiyot, the son of his late brother, Shadrack Koros and that his sisters, Sally Kurgat and Eunice Koske, are now advanced in age. It is ONLY FAIR AND JUST that they be permitted to finally and fully enjoy their rightful inheritance from their father's estate.

14. He further reiterated that the continued and relentless attempt to exclude rightful heirs is not only legally untenable but utterly morally indefensible. It represents a deliberate and calculated scheme to maintain an illicit control over a larger portion of the estate, while systematically depriving other dependents of their guaranteed inheritance.

15. He maintained that excluding Sally Kurgat and Eunice Koske at this critical stage would constitute a blatant act of unlawful disinheritance, directly violating the foundational principles of fairness and equality upheld in binding judicial precedent.
16. It is his attestation that pursuant to the rectified grant, the succession process is in its final, critical stages, having already progressed through Land Control Board approval.
17. He therefore urged this court to find that the instant application is demonstrably frivolous, utterly without merit, and an abuse of court process, and consequently dismiss it in its entirety for being fundamentally contrary to the principles of fair inheritance, as stipulated under Section 29 of the Law of Succession Act, Cap 160.
18. The matter came up for inter partes hearing and this court directed the parties to file their written submissions.
19. The applicant filed submissions and contended that rectification to *wit* the introduction of **new beneficiaries** and **redistribution of the estate**, went beyond mere

correction of clerical or typographical errors and amounted to a **substantive alteration** of the confirmed grant and of the court's judgment dated 16th December, 2022. The applicant cited the case of ***In re estate of Charles Kibe Karanja (Deceased) [2015] KEHC 2067 (KLR)*** the court extensively discussed the provisions above and insisted as follows: ***“The only time when a certificate of confirmation of grant may be altered without affecting the orders upon which the certificate is derived from is where there are superficial errors, such as misspelling of names or misdescription of property or persons, or mistakes arising from the transcription or extraction of the certificate from original order of the court. This does not call for review of the original order of the court, but rather for correction of the superficial errors and mistakes. For such the court can be moved under Rule 73 of the Probate and Administration Rules, which saves the inherent powers of the court”***. He maintained that in view of the above, the rectification of grant dated 21st June, 2023 was not proper in law.

20. The applicant therefore urged this court to find and hold that the rectification undertaken was improper in law and to proceed to review, vary and/or set aside the orders of 29th February, 2024. The effect of doing so will be to restore the sanctity of the confirmed grant and to safeguard the rights of all legitimate heirs, including the estate of the late Shadrack Koros, whom the Applicant represents.

21. The petitioners/respondents filed submissions and reiterated that the Applicant's failure to participate in the proceedings of 15th September 2023, despite proper service, followed by a belated application for review and stay, constitutes a clear abuse of the court process. It is their case that the law is well-settled that a party cannot sit on its rights and later seek to invalidate a process it willingly neglected. They relied on the finding of the Court in ***Musa Misango v Erasmus Isalambo [2012] eKLR*** where the court stated that "***An application for review cannot be used as a substitute for an appeal.***" They maintain that the applicant seeks to relitigate a matter **that** has reached finality. They argue that the applicant has not met the legal

threshold for review, variation or setting aside of the court orders and therefore the prayer for review or variation of the court orders lacks merit and is a clear attempt to use the court process as a substitute for an appeal.

22. The petitioners/respondents reiterated that the deceased, Kiprof Maina, was survived by all his children, including Sally Kurgat and Eunice Koske. The judgment of 16th December 2022 unequivocally recognized them as legitimate heirs. The initial grant's omission of these daughters was a palpable error, necessitating rectification under **Section 74 of the Law of Succession Act**. This was a lawful exercise of the court's powers to ensure equitable distribution, as mandated by **Section 40 of the same Act**. They maintained that the succession process is nearing completion, with Sally Kurgat and Eunice Koske having signed transfer documents and attended the Land Control Board and therefore the applicant's objection is a last-minute attempt to stall a process that is almost finalized.

23. It is therefore the petitioner/respondents prayers that the Honourable Court upholds the rectified grant dated **29th**

February 2024 and all relevant preceding court orders to ensure the rightful, final, and equitable distribution of the estate of the late Kiprop Maina.

24. I have considered the application, replying affidavit and submissions on record and find that the issue for determination is whether to stay or set aside orders of 29th February, 2024 leading to the issuance of rectified grant and thereby afford the applicant a fair opportunity to respond to the summons for rectification. It is the applicants case that rectification that is a precursor to the instant application went beyond mere correction of clerical or typographical errors and amounted to a **substantive alteration** of the confirmed grant and of the court's judgment dated 16th December, 2022, whereas it is the respondents' case that the initial grant's omission of the daughters of Kiprop Maina was a palpable error, necessitating rectification under **Section 74 of the Law of Succession Act.**

25. This court has considered the respective cases of the parties and it is evident that the rectification of the grant dated 21st June, 2023 went beyond the limited scope

envisaged under **Section 74 of the Law of Succession Act** and **Rule 43 of the Probate and Administration Rules**. *In the matter of the Estate of Geoffrey Kinuthia Nyamweinga deceased [2013] eKLR* the court stated. ***“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...”*** It is trite law that other matters which may substantially affect the grant are best addressed through an application for review of the judgment or appeal.

26. In the instant matter it would therefore be in the interest of justice to set aside the orders of 29th February, 2024 leading to the issuance of rectified grant. In addition, the court retains inherent powers under **Rule 73 of the**

Probate and Administration Rules to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process.

27. In light of the foregoing, the notice of motion dated 13th May, 2025 is allowed giving rise to issuance of the following consequential Orders;

(i) The orders of this honourable court of 29th February, 2024 and all consequential orders set aside.

(ii) Order that the matter be reopened for hearing afresh of the summons for rectification of grant dated 15th September, 2023 is granted.

(iii) Each party to meet his own costs.

Delivered, signed and dated at Kericho this 18th day of December, 2025.

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**J.K. SERGON
JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Kipyegon Cheruiyot – Present in Person

