

REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE NO. 56 OF 1993
IN THE MATTER OF THE ESTATE OF KIPROTICH MUGE Alias
CHEMOBO ARAP MUGE - DECEASED

Coram: Before Hon. Justice R. Nyakundi

M/S Tarigo Kiptoo & Co. Ltd

RULING

1. Before this Court are summons for rectification of grant dated 16th December 2025 brought under Section 74 of the Law of Succession Act, Cap 61 Laws of Kenya and Rule 43 of the Probate and Administration Rule) seeking for orders that:
 - (a) The Honorable Court do rectify and/or amend the Certificate of Confirmation of Grant which was confirmed on 2nd August 2022 and the properties allocated to Philip Kipchoge Rotich and Eliud Kipchirchir in Nandi Kurgung/527 and Nandi/Kurgung/492 be rectified and/or amended to read as follows:
 - (i) Nandi/Kurgung/492
 - Philip Kipchoge Rotich 5.7 acres
 - Eliud Kipchirchir 6.0 acres
 - (ii) Nandi/Kurgung/527 - Philip Kipchoge Rotich - 2.2 Acres
2. Which application is supported by the affidavit of Jacob Kimutai Beles as follows:
 - (a) That the grant was issued sometimes on 1st August 2022 or thereabouts and the certificate of confirmation issued on 2nd August 2022.
 - (b) That the Letters of Administration Intestate issued to the Administrator herein and the same was confirmed on 2nd August 2022.

- (c) That there is need to rectify/amend the Certificate of Confirmation to capture the correct acreage for each of the 2 beneficiaries.
- (i) Nandi/Kurgung/492
 - Philip Kipchoge Rotich 5.7 acres
 - Eliud Kipchirchir 6.0 acres
 - (ii) Nandi/Kurgung/527 - Philip Kipchoge Rotich - 2.2 Acres
- (d) That it is in the interest of justice that this application be allowed.
- (e) That no one shall suffer any prejudice should this application be allowed.
3. That the summons is being supported by an affidavit by Jacob Kimutai Beles dated 16th December 2025 in which he depones as follows:
- (a) That certificates of confirmation of grant of letters of administration of the estate was issued to me in this matter on the 1st August 2022 or thereabouts.
 - (b) That at the time of confirmation of grant, the properties allocated to my brothers Philip Kipchoge Rotich and Eliud Kipchirchir were not captured correctly as shared.
 - (c) That there is need to rectify/amend the Certificate of confirmation to capture the correct acreage for each of the 2 beneficiaries.
 - (i) Nandi/Kurgung/292
 - Philip Kipchoge Rotich - 5.7 acres
 - Eliud Kipchirchir - 6.0 acres
 - (ii) Nandi/Kurgung/527 - Philip Kipchoge Rotich - 2.2 Acres
 - (d) that my brother Eliud Kipchirchir had been given 6.0 acres in Nandi/Kurgung/492 and my brother Philip Kipchoge Rotich was to take 5.7 acres in Nandi/Kurgung/492 and 2.2 acres in Nandi/Kurgung/527.
 - (e) That there is need to rectify/amend the certificate of confirmation dated 2nd August 2022 to capture the above position.
 - (f) That it is in the interest of justice that this application be allowed.

(g) That no one shall suffer any prejudice should this application be allowed.

(h) That the beneficiaries, heirs and/or dependants of the estate have consented to the present application for rectification of grant.

(i) That this application has been brought promptly and timely and the same be allowed as prayed.

(j) That what is herein is true to the best of my knowledge, information and belief.

4. This is the basis upon which this application will be considered. Although the applicant has moved the court under the ambit of rectification prima facie the nature of the remedies sought tilt more towards review than rectification.

Decision

5. The review of a ruling or judgment is primarily governed by Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules as applied with Rule 73 (1) of the Probate and Administration Rules. Review can be granted on three main grounds: discovery of new evidence not previously available despite due diligence, an error apparent on the face of the record, or any other sufficient reason. These key principles are briefly discussed hereinunder below:

1. Error Apparent on the Face of the Record

- In the case of ***National Bank of Kenya v. Ndungu Njau [1997] eKLR (Court of Appeal)***: This case established that an error apparent on the record must be self-evident and not require extensive argument. Errors of law, such as misinterpreting a statute, are grounds for appeal, not review. Review is meant to correct obvious errors or omissions by the court. Therefore the error must be self-evident and should not require an examination or argument to establish it.

- Similarly, in **Mutia & 2 others v. Exparte Applicants [2025] KEHC 7446**: The court considered whether an alleged factual error in the judgment concerning the annexation of a document constituted an error apparent on the face of the record.

2. Discovery of New Evidence

*"It must at least be such as presumably to be believed and if so, it would be conclusive. The discovery afore stated is not only a discovery of new and important materials or evidence, that would entitle a party to apply for review, but the discovery of any new materials or evidence; and important matter must be one which was not within the knowledge of the party when the decree was made. The person seeking the review should prove strictly the diligence as clearly spelt out in the above rule which he claims to have exercised and also that the matter or evidence to which he wishes to have access to is, if not absolutely conclusive, at any rate, nearly conclusive. 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. The party seeking a review should prove strictly the diligence he claims to have exercised and also that the matter or evidence which he wishes to have access to is, if not absolutely conclusive, at any rate, nearly conclusive. A bare assertion in the affidavit that the party could not trace the documents earlier will not do. It is not the proper function of a review application to supplement the evidence or to make it serve the purpose of merely introducing evidence which might possibly have had some effect upon the result." See **Tungabhadra Industries (Pvt.) Ltd. V government of Andhra Pradesh AIR 1964 SC1372.***

- The Court in **Francis Origo & Another v. Jacob Kumali Mungala [2005] eKLR**: This case outlined that new evidence must be credible, material, and undiscoverable at the time of the hearing despite the applicant's due diligence.

- In addition, in the case of ***Chepkaitany v. Kaimugul* [2025] KEELC 677**: The court emphasized that the applicant must prove due diligence in trying to obtain the evidence earlier.

3. Sufficient Reason

The term '**sufficient reason**' is wide enough to include a misconception of fact or law by court. The objection of Review is to do away with quickly the injustice which may be necessitated by way of invoking the doctrine "*actus curie neminem gravabit* which means that no act of court should harm a litigant it is the bounden duty of the courts to see that if a person is harmed by mistake of the court, he should be restored quickly to the position he would have occupied but for the mistake. See **Smti meera bhanja vs smti Nirmala kumari (Choudhury) 1995 SC 455, Board of Control for Cricket in India v Netaji Cricket Club AIR 2005 SC 592.**

- In the case of **Pancras T. Swai v. Kenya Breweries Limited [2014] eKLR (Court of Appeal)**: The court indicated that "any other sufficient reason" is interpreted in light of the other grounds for review and provides discretionary power.
- Further the court in ***Shuma v. Ochume* [2025] KEHC 4397**: The court considered an advocate's mistake, such as technical issues during a virtual hearing leading to dismissal, as potentially falling under "sufficient reason," noting that clients should not suffer for their advocate's errors.

6. The word review in legal parlance connotes a judicial re-examination of the case. Therefore, in order to rectify an error and prevent the gross miscarriage of justice, a provision for review has been laid down under Section 80 of the Civil Procedure Act as read with Order 45 Rule 1 of the Civil Procedure Rules. What the law does not envisage is that review cannot be sought merely for fresh hearings or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only within the four corners of the grounds set out under Order 45 Rule 1 of the Civil Procedure Rules. Review literally and even judicially means re examination or

reconsideration. Basic Philosophy inherent in it is the universal acceptance of human fallibility ... Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. Review is a serious matter; it is rehearing of the appeal all over again a Judgment once delivered is final. A departure from that principle can be justified only when circumstances of a substantial and compelling character make it necessary to do so.

7. Therefore, from the affidavit evidence the applicant has established sufficient cause to grant the amendment of the certificate of confirmation of grant conditioned on the clauses as stipulated in the affidavit to meet the ends of justice on transmission of the intestate estate. It is for these reasons that an amended certificate of confirmation of grant shall be issued forthwith by the Deputy Registrar of the High Court as grounded in the summons and corresponding affidavit in support. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 18TH
DAY OF DECEMBER 2025**

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R. NYAKUNDI
JUDGE