



REPUBLIC OF KENYA



**n re Estate of the Late Samuel Bargoiyet Kangogo – Deceased (Succession Cause 117 of 2006) [2025] KEHC 18800 (KLR) (18 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18800 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 117 OF 2006**

**RN NYAKUNDI, J**

**DECEMBER 18, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE SAMUEL  
BARGOIYET KANGOGO – DECEASED THROUGH**

**IN THE MATTER OF  
CATHERINE JERUTO BARGOIYET ..... PETITIONER**

**RULING**

1. Before Court are summons for confirmation of grant dated 14<sup>th</sup> October 2025 seeking for the following orders:
  - a. The certificate of confirmation of grant issued on the 7<sup>th</sup> of October 2025 to Catherine Jeruto Bargoiyet be amended.
  - b. That the costs be in the cause.
2. Which application is supported by the affidavit of Catherine Jeruto Bargoiyet the Administrator herein sworn and filed is premised on the following grounds:
  - a. That the Certificate of confirmation of Grant issued on the 7<sup>th</sup> October 2025 be amended.
  - b. That the Applicant herein had during the time of confirmation of the said Grant had left out two parcels of land namely:
    - i. L.R. Portion No. 9102 Malindi measuring 1.5 acres
    - ii. Kiplombe/Kiplombe Block 10 (Growel)/141 measuring 5 acres.
  - c. That the Applicant herein had left out one of the beneficiaries namely Paul Lotaruk Mugwa.
  - d. That this application has been brought expeditiously and in good faith.
3. The supporting affidavit deponed by Catherine Jeruto Bargoiyet states as follows:



- a. That I was issued with certificate of confirmation of grant dated 7<sup>th</sup> October 2025.
- b. That I erroneously let out 2 parcels of land that form part of the deceased's estate namely L.R. Portion No. 9102 Malindi measuring 1.5 acres and Kiplombe/Kiplombe Block 10 (Growel)/141 measuring 5 acres.
- c. That I also left out one of the beneficiaries one Paul Lotaruk Mugwa.
- d. That I now request this honourable Court to amend the certificate of confirmation of grant issued on the 7<sup>th</sup> October 2025 to include the above.
- e. That the application is brought in good faith and in the interest of justice.

## Decision

4. This application is contextualized as summons for amendment of certificate of confirmation of grant dated 7<sup>th</sup> October 2025. What is the basis of the amendment? That the Applicant herein during the time of confirmation of grant had left out two parcels of land namely: L.R. Portion No. 9102 Malindi measuring 1.5 acres and Kiplombe/Kiplombe Block 10 (Growel)/141 measuring 5 acres.
5. This to me cannot be a rectification or amendment but a review under Section 80 of the *Civil Procedure Act* as construed with Order 45 Rule 1 of the Civil Procedure Rules grounded on discovery of new compelling evidence by the Applicant which was not available at the time of confirmation proceedings in the making of the grant duly issued on 7<sup>th</sup> October 2025. To appreciate this jurisdiction, the Court in *Independent Medical Legal Unit v Attorney General of the Republic of Kenya*, Application No. 2 of 2023 held as follows:

“The review jurisdiction of the Court cannot be exercised on the ground that the decision of the court was erroneous on merit. That would be in the province of a Court of Appeal. A review cannot be brought merely for fresh hearing or argument or correction of an erroneous view taken earlier. A review proceeding cannot be equated with the original hearing of the case. The purpose of the review jurisdiction is not to provide a back door by which unsuccessful litigants can seek to re-argue their cases. To qualify for review...an application needs to fulfil any, a combination of all the conditions specified immediately above. A prospective Applicant for review must adduce discovery of some new set of facts/evidence which was not within the knowledge of the party and the Court at the time of the delivery of judgment, and which the Party or the Court could not have discovered even if they deployed due diligence; or the impugned judgment must evince some mistake, fraud or error that is manifest in the face of the record; or, alternatively, the judgement, as is, must have given rise to a miscarriage of justice.”

6. In the case of *National Bank of Kenya vs Ndungu Njau* Civil Appeal No. 2111 of 1996 the Court remarked on review application 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 proceed on an incorrect expansion of the law.



7. The review application though premised as an amendment is based on discovery of new and important matter of evidence on two parcels of land left out during the earlier confirmation of certificate of grant. The new evidence in this matter as a ground for review is anchored on the two parcels of land in question and therefore qualifies as new and important evidence which was discovered by the Applicant when already there is an existing certificate of confirmation of grant dated 7<sup>th</sup> of October 2025.
8. In our jurisdiction the review of judgment or ruling will not be maintainable on the following grounds:
- “i. Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
  - ii. Mistake or error apparent on the face of the record;
  - iii. Any other sufficient reason. 20.2. When the review will not be maintainable:
    - i. A repetition of old and overruled argument is not enough to reopen concluded adjudications.
    - ii. Minor mistakes of inconsequential import.
    - iii. Review proceedings cannot be equated with the original hearing of the case.
    - iv. Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.
    - v. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
    - vi. The mere possibility of two views on the subject cannot be a ground for review.
    - vii. The error apparent on the face of the record should not be an error which has to be fished out and searched.
    - viii. The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
    - ix. Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative.”
9. This is the epitome of this ground as illuminated in the case of *State of West Bengal & Ors v Kamal Sengupta & Ors* 2008 (8) SCC 612 where it was held that before entertaining review on the ground of discovery of new matter or evidence the Court is required to record its satisfaction about three aspects, which can also be called as triple test (a) new matter/evidence discovered is of such a nature which could change the judgment (b) Such new matter/evidence was not within the knowledge of the party seeking review (c) same could not be produced before court even after due diligence.
10. In light of the above principles and on juxtaposed on the affidavit evidence it is crystal clear that at the time of confirmation of the said grant the two assets LR Portion No. 092 Malindi and



Kiplombe/Kiplombe Block 10 were not within the knowledge of the applicant when crafting a mode of distribution which culminated in the certificate of confirmation dated 7<sup>th</sup> October 2025.

11. For those reasons the application dated 24<sup>th</sup> October 2025 be and is hereby allowed and within the parameters for exercise of review jurisdiction an amended certificate of confirmation of grant be issued forthwith by the Deputy Registrar of the High Court. This ruling has been issued on the basis of the Certificate of confirmation of grant which amended the primary grant issued on 7<sup>th</sup> October 2025.

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

.....

**R. NYAKUNDI**

**JUDGE**

