



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Walter Kibet Kimwatan (Deceased) (Succession Cause
5 of 2018) [2026] KEHC 37 (KLR) (15 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 37 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 5 OF 2018
RN NYAKUNDI, J
JANUARY 15, 2026**

IN THE MATTER OF THE ESTATE OF THE LATE WALTER KIBET KIMWATA (DECEASED)

RULING

1. Before this Court is summons for rectification of certificate of confirmation of grant dated 20th day of December 2024 seeking the following orders:
 - a. That the certificate of confirmation of grant issued to the said Mary Jepkemboi Kibogy on the 3rd June 2021 be rectified in a manner as per the annexed proposed amended certificate of confirmation of grant.
 - b. Costs be in the cause.
2. The application is on grounds that:
 - a. It is vital to so rectify the confirmation of grant for it is incomplete as some assets were not indicated in the schedule to certificate of confirmation of grant.
3. In support of the application is the annexed affidavit of Mary Jepkemboi Kibogy who deponed as follows:
 - a. That I am the administrator of the deceased estate pursuant to certificate of confirmation of grant issued to me on 3rd June, 2021.
 - b. That at the time of his death the deceased left behind assets in terms of the schedule to the confirmation of grant annexed hereto and marked “MJK1”.
 - c. That however the said schedule is incomplete as some assets being parcels of land known as Kiplombe/Kaunet Block 11(Walter)/98, Kiplombe/Kaunet Block11(Walter)/95, Kiplombe/Kaunet Block 11(Walter)/92, Kiplombe/Kaunet Block11(Walter)/85, Kiplombe/Kaunet Block 11(Walter)/84, Kiplombe/Kaunet Block11(Walter)/83, Kiplombe/Kaunet Block11(Walter)/79, Kiplombe/Kaunet Block 11(Walter)/78, Kiplombe/Kaunet Block11(Walter)/77, Kiplombe/Kaunet Block11(Walter)/76, Kiplombe/Kaunet



Block11(Walter)/75, Kiplombe/Kaunet Block 11(Walter)/93 and Shares at Waldorf Holdings Limited were inadvertently left out.

- d. That we pray that certificate of confirmation of grant be rectified to reflect all the shares as the same were discovered after confirmation as per annexed is the proposed amended certificate of confirmation of grant marked “MJK3”.
- e. That the other beneficiaries herein have no objection to this application.

Decision

4. The application before Court is premised under Section 74 of the Laws of Succession Act and Rule 43 (1) of the Probate and Administration Rules. The application is supported by the affidavit of the Administrator Mary Jepkemboi Kibogy and the consent duly signed by:
 - i. Sheila Chemeli Kimwatan
 - ii. Pamela Kimwatan
 - iii. Edwin Kipchumba Kimwatan
 - iv. Kevin Kipkemboi
 - v. Angela Kimwatan
5. Rectification of a grant in Kenya, particularly concerning succession cases is strictly limited to minor clerical errors like names and descriptions of property under Section 74 of the Law of Succession Act. The High Court consistently rules that this process cannot be used to make substantive changes, such as adding new beneficiaries or assets, which would require a review of judgment or a fresh application.
6. Generally, therefore the contemplation of the law on rectification is limited in scope with no substantive changes to the legal instrument on administration and transmission of the estate to the beneficiaries. This means that any changes or amendments which affect the core of distribution model must be addressed through a formal application for the review of the judgment or ruling. In matters of rectification it is limited in scope as demonstrated by the following cases:
 - a. In re estate of Wambugu Ngera (deceased) [2022] KEHC 2746: the Court allowed the rectification of the spelling of beneficiaries’ names e.g (“Thongori” to “Thogori”) and a clerical error in the final order that mistakenly referred to the “third house” instead of the “fourth house” as intended in the main judgement. The Court found these minor errors failing under Section 74.
 - b. In re Estate of Jonah Kiprotich Arap Tuwei (deceased) [2025] KEHC 8164: The High Court permitted the amendment of a certificate of confirmed grant where the acreage for a parcel of land was erroneously indicated as 1 acre instead of 1.5 acres due to an inadvertent mistake by the applicant’s advocate.
7. In the instance application the Applicant seeks to incorporate assets left behind by the deceased and the same are to be redistributed afresh, therefore rectification is not applicable as the new assets goes beyond the scope of correcting an error or description of the net estate of the deceased. The proper application which answers the question in the summons is one on review. However, this Court recalls that on 17th September 2025 it addressed this issue of this intestate estate in the following language in an interim decision thus:



- i. This application has been considered as accompanied with the affidavit and necessary consents by the beneficiaries. This application does not fill the equity shaped gap in my understanding of the law of Succession within the provisions of Sections 35, 36, 37, 38 and 40. The model proposed for rectification is in violation of the letter and spirit of the Statute on the characteristics on the essential role of equity which now require further excavation by the Administrators and the beneficiaries before determining the instant summons.
 - ii. The summons is therefore referred back to the learned Counsel Mr. Kibii to provide the necessary leadership so that the transmission of this Estate can be heard and determined within a reasonable time. The confirmation proceedings/rectification be and is hereby scheduled 22nd October 2025.
8. In my considered view any consent or mediation agreement presented to the Court for an adoption must meet the threshold of the law:

“Decided cases in Kenya regarding intestate estate highlight key principles from the *law of Succession Act* (CAP 160). Surviving spouses and children are the main beneficiaries. In a monogamous marriage, the surviving spouse typically receives all personal and household items and a life interest in the rest of the estate, which ends upon remarriage. The remaining estate is usually divided equally among all children, a principle supported by cases like *Stephen Gitonga M Murithi v Faith Ngira Murithi* (2015) eKLR. For polygamous union, distribution considers the number of children in each “house” counting each wife as a unit. Case law such as *Rono v Rono* (2005) eKLR 538 has examined the wife’s contribution in such situation. The Act takes precedence over discriminatory customary law.
9. Why do I consider the consent in support of the review of the certificate of grant of confirmation voidable. The doctrine of consent being void reverse the salutations where an agreement is considered invalid from the very beginning for reason of not being in consonance with the provisions of a statute. Therefore, there is a fundamental problem with a consent given by the beneficiaries geared towards a review under Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure rules which is creating a kind of trust in the form of alienating the portion of the estate to an administrator without any form of distribution. In terms of the *law of Succession Act*, the administrator is already in breach of the timeline set to distribute the estate and render an account in the statute under Section 83 as a probate account. The work of an administrator is not for eternity. It is time bound. If the court agrees with the parties the outcome of it is to create an estate within an estate which is not the letter and spirit of the *law of Succession Act*.
10. The mandate of the Probate Court is to identify the beneficiaries and the net estate which shall in turn be distributed to the beneficiaries legitimately entitled to the estate under Section 29 of the *Law of Succession Act*. For the Court to be told that the entire property schedule as pleaded in supporting affidavit dated 20th December 2024 and the corresponding consent be transmitted wholly to the Administrator without compelling evidence to me are ultra vires to the law. The summons is therefore denied.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 15TH DAY OF JANUARY, 2026

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R. NYAKUNDI

JUDGE

