

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT CHUKA**  
**MISC SUCCESSION CAUSE NO. 3 OF 2017**  
**IN THE MATTER OF THE ESTATE OF TITUS M'BETA**  
**M'MUTHARA**

DORIS KAGENDO KIRIMI.....1<sup>ST</sup> APPLICANT/PETITIONER

JACKTON MUNENE TITUS.....2<sup>ND</sup> APPLICANT/PETITIONER

AND

JAMES KAARIA NJOKA.....1<sup>ST</sup> INTERESTED PARTY

AUGUSTINE KIRIMI NYAGA..... 2<sup>ND</sup> INTERESTED PARTY

**RULING**

1. For determination is the Application dated 30<sup>th</sup> May

2025 seeking the following orders: -

- i. That this court be pleased to rectify/review and/or amend the grant dated 11<sup>th</sup> June 2019 to read Plot No. M 18 A Chuka Township.

- ii. That this court be pleased to distribute Plot No. M18 A Chuka Township in the names of Jackson Kunene Titus and James Kaaria Njoka.
- iii. That this court be pleased to declare that M18 has since been subdivided into M18A and M1 B with separate owners.
- iv. That this court be pleased to declare that M18 B belongs to Augustine Kirimi Nyaga after the demise of M'boore Kiboru.
- v. Costs in the application be in the cause.

2. The Application is founded on the grounds set out on its face and on the supporting affidavit Jackson Kunene Titus the 2<sup>nd</sup> petitioner on his behalf and on

behalf of the 1<sup>st</sup> Petitioner. He averred that he is the 2<sup>nd</sup> administrator pursuant to the grant confirmed on 13<sup>th</sup> February 2020.

3. He stated that Plot No. 18M Chuka Township as appears on the rectified grant dated 11<sup>th</sup> June 2019 was erroneously typed and instead should read Plot No. M18A Chuka Township as is on the subdivision minutes of the county. That in the interest of justice and fairness, the grant dated 13<sup>th</sup> February 2020 should further be rectified and/or reviewed to reflect the correct plot number for ease of distribution.

4. He deposed that the deceased in his lifetime sold a portion of Plot No. M18A to James Kaaria Njoka the 1<sup>st</sup> Interested Party. That the rest of the estate has been distributed save for Plot No. M18 A where the

Interested party being a bonafide purchaser was omitted as a beneficiary.

5. He stated that the agreed mode of distribution is as follows: -

**Karingani/Mugirirwa/149**

- i. Doris Kagendo Kirimi-0.843 acres
- ii. Ruth Wanjiku Karuga- 1.54 Acres for her benefit and holding in trust for her children namely: - Mugambi Njagi, Christine Kawira, Wanjiku Njagi, Wairimu Njagi and Titus Mugambi Njagi
- iii. Newton Muchiri, Caroline Kainyu and Munene Gatakaa 1.38 acres jointly.
- iv. Lucy Kageni Njiru- 0.10 acre
- v. Rhoda Kaimuri Mbungu and Wanja Kanyua 0.10 acres jointly.

- vi. Pannuel Gitonga Mbungu- 1.58 acres
- vii. Felix Muteti Gitonga, Annjoy Makena Gitonga and Evans Mawira Gitonga 0.35 acres jointly
- viii. Jackton Munene Titus- 1.51 acres

**Plot No. M18 A Chuka Township**

- i. Jackton Munene Titus and James Kaaria Njoka in common.

6. On 11<sup>th</sup> March 2025, the court directed the Applicant to swear an affidavit to explain how the said plot was part of the estate of the deceased as it was not part of the initial grant. Subsequently, the Applicant filed the supplementary affidavit dated 4<sup>th</sup> November 2025.

7. From the pleadings before me, the following issues arise for determination: -

- i. Whether the application meets the threshold for rectification or review of a grant under Section 74 of the Law of Succession Act.
- ii. Whether the court may include the Interested Party, a purchaser, in the distribution as a liability to the estate.
- iii. Whether the declarations sought with respect to M18A and M18B are legally sustainable.

8. Rectification of grant is provided under Section 74 of the Law of Succession Act and Rule 43(1) of the Probate and Administration Rules. The section

empowers the court to rectify errors that relate to names, descriptions, or clerical mistakes in grants.

**9. Section 74 of the Law of Succession Act**

provides: -

“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.”

**10. Rules 43 (1) of the Probate and**

**Administration Rules** provide further: -

“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 the 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, he may apply by summons in Form 110 for such rectification through the registry and in the cause in which the grant was issued.”

11. The Applicant contends that there was an error in the grant where the suit property was not included in the rectified grant dated 11<sup>th</sup> June 2019. He produced a letter of allotment showing that the suit property was allotted to the late Titus Mbungu and M’Boore Kiboru on 7<sup>th</sup> February 1994. He also produced minutes of the Sub county meeting which show that directions were made for subdivision of

Plot M18 to reflect Plot M18A belonging to Titus Mbungu and Plot M18 B belonging to M'Boore Kiboru.

12. Although the asset was not included in the initial Petition, the supplementary affidavit clarifies that the deceased owned the original Plot M18 which was subsequently subdivided into M18A and M18B. The subdivision occurred after the deceased's demise, and thus the new numbers merely represent the same original property.

13. The evidence supplied cures the earlier omission and qualifies as discovery of material evidence and sufficient reason warranting review under Order 45.

14. In so finding, I associate myself with the findings of Mabeya J in **in re Estate of M'Mwirichia**

**(Deceased) [2019] KEHC 7240 (KLR)** where he rendered as follows: -

**“In view of the foregoing, rectification under *section 74 of the Act and Rule 43 of the Rules* is only limited to errors in respect of names, descriptions or in the setting out the time or place of deceased’s death. Any ground for rectification has to be by way of review which will be based on 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.”**

15. Regarding the stake of the Interested Party in the suit property, the uncontroverted evidence

shows that the deceased sold part of M18A to James Kaaria Njoka during his lifetime. This position was agreed upon by all the beneficiaries who were also present in court at the hearing of the Application and confirmed the position. It is my finding therefore that Interested Party therefore holds a beneficial interest created by the deceased, which ought to be reflected in the distribution as he was a liability to the estate of the deceased.

16. Having found that the evidence presented before me showing that Plot No. M18 was subdivided to create Plot M18A and Plot No. M18B with distinct owners, it is my further finding that the Application dated 30<sup>th</sup> May, 2025 is merited and is granted.

17. For clarity, I make the following orders: -

- i. The grant dated 13th February 2020 is hereby further rectified to include “Plot No. M18A Chuka Township.”
- ii. Plot No. M18A Chuka Township shall be distributed jointly to Jackson Kunene Titus and James Kaaria Njoka, the latter being a bona fide purchaser for value from the deceased hence liability to the estate.
- iii. Original Plot M18 Chuka Township was subdivided into Plot Nos. M18A and M18B, devolved to Augustine Kirimi Nyaga upon the demise of M’Bore Kiboru.
- (iv) Parties to bear their respective costs.

Orders accordingly.

**Ruling delivered, dated and signed at Chuka  
this 3<sup>rd</sup> day of February, 2026.**

.....

**R. LAGAT-KORIR**

**JUDGE**

**Ruling delivered in the presence of Mr. Kinyanjui holding brief for Mr. Mutegi for the Applicants/Interested Parties. Muriuki (Court Assistant).**

ORIGINAL