



REPUBLIC OF KENYA



**Chesire v Cheres (Succession Cause 92 of 2005)
[2026] KEHC 1617 (KLR) (17 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1617 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 92 OF 2005
RN NYAKUNDI, J
FEBRUARY 17, 2026**

BETWEEN

LUDIA CHERONO CHESIRE APPLICANT

AND

SOPHIE JERUTO CHERES RESPONDENT

RULING

1. What is pending before this Honourable Court for determination is Summons for Rectification of Grant dated 12th January 2026 premised under section 74 of the *Law of Succession Act*, Rule 43 of the Probate and Administration Rules in which the Applicant is seeking the following orders: -
 - a. Spent
 - b. That pending the hearing and determination of this application interpartes there be a temporary injunction restraining the Respondent from selling, transferring, charging and/or in any way dispose off parcel number Soy/Kapsang Block 2 (Saniak)/23.
 - c. That the certificate of confirmation of grant issued dated the 8th May, 2023 be rectified/ amended as follows: -

Under Item (11) on shares

The property known as Soy/Kapsang Block 2 (Saniak)/23 measuring approximately 8 acres vested in the name of Sophie Jeruto Cheres, the Respondent herein be redistributed as follows:

1. Betty Jeptoo Chepkwony-Soy/Kapsang Block 2(Saniak)/23-1.5 acres
2. Ludia Cheron0 Chesire-Soy/Kapsang Block 2(Saniak)/23-1.5 acres
3. Sophie Jeruto Cheres-Soy/Kapsang Block 2(Saniak)/23-1.5 acres



4. Aileen Jematia Tarus-Soy/Kapsang Block 2(Saniak)/23-1.5 acres
 5. Estate of Reeny Jelagat-Soy/Kapsang Block 2(Saniak)/23-1.5 acres
- d. Costs of this application be provided for.
2. The application is made on the following grounds on the face of it among others;
- a. That the Certificate of confirmation of grant was issued on 8th May, 2023.
 - b. That there was a fundamental error in the grant to the extent that parcel number Soy/Kapsang Block 2(Saniak)/23 was transmitted to Sophie Jeruto Cheres, the Respondent herein.
 - c. That prior to the death of the deceased, he had sold 8 acres of the estate and the proceeds of the sale were used to purchase and settle the Respondent in a separate parcel of land.
 - d. That the deceased herein later repurchased the portion of 8 acres so sold above from the person who had purchased it.
 - e. That it is obvious that the repurchase of the property vested the land back to the estate and which is to be shared by all the beneficiaries entitled to it.
 - f. That all the daughters of the deceased were later given 8 acres each in tandem with what the Respondent had received from the deceased.
 - g. That it has come to the Applicant's knowledge that this portion of 8 acres was transmitted to the Respondent in the certificate of confirmation of grant without her knowledge and without the knowledge of the other beneficiaries.
 - h. That allowing the Respondent to benefit from the aforesaid parcel of land would amount to unjust enrichment to the detriment of the other beneficiaries.
 - i. That as such there is need to amend the grant for purposes of each daughter to receive an equal share from the estate of the deceased herein without any favoritism.
 - j. That the orders sought herein shall not in any way cause anyone to suffer prejudice.
 - k. That the application has been made in good faith.
 - l. That it is just, desirable and fair that the grant be rectified and amended accordingly.
3. The Application is supported by the annexed Affidavit dated 12th January 2026 sworn by Ludia Cheronno Chesire who deponed as follows: -
- a. That I am the administrator of the estate of the deceased herein and well versed with the facts giving rise to this application hence competent to swear this affidavit.
 - b. That I was appointed as an administrator of the estate of the deceased pursuant to a grant of letters of administration intestate issued on 10th May, 2023.
 - c. That the Certificate of confirmation of grant was issued on 8th May, 2023.
 - d. That there was a fundamental error in the grant to the extent that parcel number Soy/Kapsang Block 2(Saniak)/23 was transmitted to Sophie Jeruto Cheres, the Respondent herein.
 - e. That prior to the death of the deceased, he had sold 8 acres of the estate and the proceeds of the sale were used to purchase and settle the Respondent in a separate parcel of land.



- f. That the deceased herein later repurchased the portion of 8 acres so sold above from the person who had purchased it
- g. That it is obvious that the repurchase of the property vested the land back to the estate and which is to be shared by all the beneficiaries entitled to it.
- h. That all the daughters of the deceased were later given 8 acres each in tandem with what the Respondent had received from the deceased.
- i. That it has come to the Applicant's knowledge that this portion of 8 acres was transmitted to the Respondent in the certificate of confirmation of grant without her knowledge and without the knowledge of the other beneficiaries.
- j. That allowing the Respondent to benefit from the aforesaid parcel of land would amount to unjust enrichment to the detriment of the other beneficiaries.
- k. That as such there is need to amend the grant for purposes of each daughter to receive an equal share from the estate of the deceased herein without any favoritism.
- l. That I am apprehensive that the Respondent is likely to dispose off the property anytime from now before this application is heard and determined.
- m. That it is necessary for the court to issue an injunction has sought to ensure that the ends of justice are met by way of preserving the property until the application is heard and determined.
- n. That the orders sought herein shall not in any way cause anyone to suffer prejudice.

Analysis and Determination

- 4. I have read and considered the Application and the Affidavit in support. There is one sole issue for determination by this Honourable Court: -

Whether the Application is merited?

- 5. The jurisdiction of this Court to entertain this Application is provided for in section 47 of the [Law of Succession Act](#). In particular, this section provides as follows: -

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.”

- 6. On the other hand, Rule 73 of the Probate and Administration Rules provides that: -

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

- 7. Section 47 of the [Law of Succession Act](#) thus vests this court with wide discretion in granting protective powers for purposes of safeguarding the estate of a deceased person. The Court of Appeal in Floris



Piezzo & Another VS TGiancarlo Falasconi (2014) eKLR, while considering whether an injunction can issue in a Succession Cause expressed itself as follows: -

“...Indeed Section 47 of the said Act gives the Court jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decree and orders as may be expedient. It cannot be said that such decrees and orders would exclude injunction orders. In other words, we are of the same view that Section 47 of the Act gives the Court all-embracing powers to make necessary orders, including injunctions where appropriate to safeguard the deceased’s estate. This section must be read together with Rule 73 of the Probate and Administration Rules which further emboldens Court’s jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. We would imagine such orders would also include injunctive orders.”

8. From the facts of the Summons, there is a contention that there was a fundamental error in the confirmation of grant to the extent that the suit property was transmitted solely to the Respondent without the knowledge or participation of the other beneficiaries. It is deponed that prior to his demise, the deceased had sold 8 acres of land, settled the Respondent elsewhere using the proceeds thereof, and subsequently repurchased the 8 acres, thereby restoring the same to the estate. The Applicant contends that the repurchased portion ought to have been shared equally among the daughters of the deceased and that its transmission exclusively to the Respondent amounts to unjust enrichment.
9. Section 74 of the Law of Succession Act permits rectification of a grant where there are errors in names, descriptions, or in setting out the time and place of death or the purpose for which the grant was made. Rectification is ordinarily limited to clerical or typographical errors and not substantive redistribution of estate property. In the present application, the allegations raised go beyond a mere clerical error. The Applicant asserts prior sale, repurchase, settlement of the Respondent and lack of consent by beneficiaries at confirmation. These are serious and substantive factual matters that cannot be determined conclusively on affidavit evidence alone.
10. This Honourable Court is not satisfied that the issues raised can be resolved purely on the basis of deposition. The veracity of the assertions regarding prior sale, repurchase and alleged settlement of the Respondent on alternative land must be tested. The Court must be afforded an opportunity to assess credibility. In the circumstances and in exercise of the Court’s inherent powers under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, I find it necessary that the Application be subjected to viva voce examination so as to clarify the matters raised in the supporting affidavit.
11. Accordingly, I make the following orders: -
 - a. That the Summons for Rectification of Grant shall be heard by way of viva voce evidence.
 - b. That the Applicant, Ludia Cheronon Chesire, shall personally attend Court and take the witness stand to clarify the matters deponed to in her supporting affidavit.
 - c. That the hearing of the application shall take place on 23rd February 2026.
 - d. There shall be no orders as to the costs
12. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA CTS IN ELDORET THIS 17TH DAY OF FEBRUARY 2026

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R. NYAKUNDI
JUDGE

