

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO. 163 OF 2002

**IN THE MATTER OF THE ESTATE OF THE LATE PHILIP
KIMARU BOTTO TEGUTIWO (DECEASED)**

**RACHEL CHEPENGENO NGENO.....1ST
PETITIONER/APPLICANT**

**JOSHUA KIPKORIR NGENO..... 2ND
PETITIONER/APPLICANT**

RULING

1. Before this court for determination is a Chamber Summons application dated 7th November 2025. The same is expressed to be brought under Rule 63 of the Probate and Administration Rules and Order 45 of the Civil Procedure Rules, Cap 21 Laws of Kenya, and all other enabling provisions of the law.

2. The Applicants seek the following orders;

a) ***THAT this Honourable court be pleased to review the confirmation orders made on 5th day of October, 2005 to accommodate the assets namely KCB SHARES under certificates No. 65123, 512989, 512986, 188773, 283842 and 678172 which were inadvertently left out or omitted during application for confirmation of grant.***

b) ***THAT the said assets have been discovered after the court has already confirmed the grant.***

c) ***THAT costs of this Application be on the cause.***

3. The application is supported by the annexed affidavit of RACHEL CHEPNGETICH NGENO, the 1st Petitioner/Applicant, sworn on even date, and the grounds set out on the face of the application.

4. The factual background, as discerned from the pleadings, is that the Applicants are the administrators of the estate of the late PHILIP KIMARU BOTTO TEGUTIWO (hereinafter "the deceased"). A grant of letters of administration intestate was duly issued to them, and the same was subsequently confirmed by this court on 5th October 2005.

5. The gravamen of the Applicants' case is that at the time of applying for confirmation of the grant, they had not discovered all the assets comprising the estate of the deceased. Specifically, they contend that certain assets, namely KCB shares contained in certificates No. 65123, 512989, 512986, 188773, 283842 and 678172, were inadvertently omitted from the list of assets filed in court during the application for confirmation.

6. The 1st Applicant depones that the original share certificates were misplaced and could not be traced at the material time, and neither did they retain copies thereof. She has annexed to her supporting affidavit copies of a statutory declaration confirming the loss of the said share certificates, as well as a document from the bank confirming the existence of the said shares in the name of the deceased. These documents are marked as "RCN-2" and "RCN-3" respectively.

7. It is the Applicants' contention that the omission has rendered it difficult to fully execute the certificate of confirmed grant as currently presented, as the same does not contain all the properties forming the estate of the deceased. They therefore pray that this court be pleased to review the confirmation orders to accommodate the omitted assets and pave way for the final execution of the grant.

8. I have carefully considered the application, the supporting affidavit, the annexures thereto, and the relevant law. The core issue for determination is whether the Applicants have invoked a remedy known to law.

9. The Applicants have moved this court under Rule 63 of the Probate and Administration Rules and Order 45 of the Civil Procedure Rules. Order 45 of the Civil Procedure Rules provides for the review of a **decree or order. The grounds for review under Order 45 are;**

· discovery of new and important matter or evidence which,

after the exercise of due diligence, was not within the knowledge of the applicant at the time the decree was passed or order made;

· mistake or error apparent on the face of the record; or

· any other sufficient reason.

10. Rule 63 of the Probate and Administration Rules imports into succession practice certain provisions of the Civil Procedure Rules, including Order 45 relating to review.

11. The critical question is this; What is it that the Applicants seek to review?

12. The confirmation orders made on 5th October 2005 distributed the assets that were then known and then presented to the court. Those orders were properly made based on the application for confirmation that was before the court at that time. There is no allegation that those orders were erroneous when made. There is no allegation of fraud, mistake, or error apparent on the face of the record. There is no new evidence that was not available at the time that would affect the correctness of those orders.

13. What the Applicants have is not a case for review. It is a case of un-administered property. The assets now sought to be included were simply not part of the proceedings that culminated in the confirmation orders of 5th October 2005. They were not omitted from those orders; they were never presented to the court for consideration. There is therefore nothing to review.

14. The remedy for un-administered property in succession matters is well settled. Section 74 of the Law of Succession Act (Cap 160) provides;

"Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly."

15. Rule 43(1) of the Probate and Administration Rules operationalizes this provision;

"Where the court considers that any grant of representation should be amended or rectified as provided by section 74 of the Act, it may order the grant to be submitted to it for amendment."

16. In *re Estate of M'Mugambi M'Ikunyua (Deceased) [2018] eKLR*, the court held;

"The discovery of assets after confirmation of a grant does not call for review of the confirmation orders. The confirmation orders were properly made on the basis of the assets that were known at the time. The appropriate remedy is to apply for rectification of the grant under Section 74 of the Law of Succession Act to include the after-discovered property."

17. In *re Estate of Julius Ndubi Javan (Deceased) [2018] eKLR*, the court observed;

"Review under Order 45 presupposes the existence of an order that is sought to be reviewed. Where assets are discovered after confirmation, there is no order to review because those assets were never the subject of any order. The grant itself is what requires rectification."

18. The distinction is critical. The Applicants have not pointed to any error in the confirmation orders because those orders dealt

with what was before the court. The error, if any, is in the grant as confirmed, which does not list all the assets of the estate. The remedy, therefore, lies in rectification of the grant, not review of the confirmation orders.

19. Accordingly, the Chamber Summons application dated 7th November 2025 found to be without merit and is hereby dismissed with no order as to Costs.

**Dated, signed and delivered at Kericho this 12th day
of March, 2026.**

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**J. K. SERGON
JUDGE**

In the Presence of:-
C/Assistant - Rutoh
No Appearance