



**In re Estate of Koskei (Deceased) (Succession Cause 49 of 2020)  
[2026] KEHC 4282 (KLR) (31 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4282 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 49 OF 2020  
JK SERGON, J  
MARCH 31, 2026**

**IN THE MATTER OF THE ESTATE OF THE LATE HENRY KIPKURUI KOSKEI (DECEASED)**

**IN THE MATTER OF**

**MARTIN KIPYEGON KIRUI ..... 1<sup>ST</sup> APPLICANT**

**KIRUI KIBET NICHOLAS ..... 2<sup>ND</sup> APPLICANT**

**RULING**

1. Before this Court is a Chamber Summons application dated 9<sup>th</sup> March 2026 filed by M/s R.K. Langat & Co. Advocates on behalf of the administrators, Martin Kipyegon Kirui and Kirui Kibet Nicholas.
2. The application seeks orders for the review of the Certificate of Confirmation of Grant issued on 20<sup>th</sup> April 2022 to include land parcel number Kericho/Kipsitet/168, which the applicants allege was inadvertently omitted from the inventory of the deceased's estate. The applicants further pray that the said parcel be allocated directly to the purchaser, Silas Kiptoo Koros.
3. The application is expressed to be brought under Rules 73, 63, and 49 of the Probate and Administration Rules, 1980, and Sections 1A, 1B, 3A, and 3B of the *Civil Procedure Act*, among other enabling provisions.
4. Upon perusal of the court file, this court notes a fundamental procedural irregularity. The Chamber Summons, in its introductory section, states;

“Which Application is premises on the grounds listed herein below and further supported by the attached affidavit of Martin Kipyegon Kirui and Kirui Kibet Nicholas the administrators of the estate herein.”
5. The application further references an annexure marked "MKK 3" which is said to be annexed to the supporting affidavit.



6. However, upon examination of the court record, no supporting affidavit has been filed. There is no sworn evidence before this court to support the factual assertions contained in the grounds of the application. The purported supporting affidavit is absent from both the file and the CTS.
7. Rule 49 of the Probate and Administration Rules provides that every application shall be supported by an affidavit, unless the court orders otherwise. This is a mandatory procedural requirement, not a mere technicality. The purpose of the supporting affidavit is to place before the court sworn evidence upon which the court can make a determination.
8. In re Estate of M'Mboroki (Deceased) [2018] eKLR, the court emphasized that applications in succession matters must comply with the prescribed procedural requirements, and failure to do so renders the application incompetent.
9. The Court of Appeal in Kago v. Kago [2021] eKLR reiterated that affidavit evidence forms the foundation upon which the court exercises its jurisdiction in succession matters, particularly where rectification of a grant is sought.
10. The application before this court is fatally defective. Without a supporting affidavit;
  - There is no sworn evidence that the property was indeed omitted;
  - There is no evidence that the omission was inadvertent rather than fraudulent;
  - There is no official search certificate confirming that the property is still registered in the deceased's name;
  - There are no sale documents (MKK 3) to support the claim that the deceased had sold the property;
  - There is no evidence of the consent of the administrators and beneficiaries.
11. The defects herein are not curable by mere amendment. The application lacks the foundational evidentiary basis required by the Probate and Administration Rules. This court cannot grant the substantive orders sought in the absence of sworn evidence. The application is therefore incompetent and must be dismissed.
12. For the foregoing reasons, the Chamber Summons dated 9<sup>th</sup> March 2026 is hereby dismissed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 31<sup>ST</sup> DAY OF MARCH, 2026**

.....

**J. K. SERGON**

**JUDGE**

In the presence of:

C/Assistant – Rutoh

No Appearance

