



REPUBLIC OF KENYA



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In re Estate of the Late Simon Kariuki Gathitu (Deceased) (Succession Cause E776 of 2022) [2026] KEMC 8 (KLR) (27 January 2026) (Ruling)

Neutral citation: [2026] KEMC 8 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
SUCCESSION CAUSE E776 OF 2022**

PA NDEGE, SPM

JANUARY 27, 2026

**IN THE MATTER OF THE ESTATE OF THE
LATE SIMON KARIUKU GATHITU (DECEASED)**

IN THE MATTER OF

ISAAC WAITITU NDERITU PETITIONER

RULING

1. Before the court is a Summons Application dated 08/09/2025 where the Applicant prays for the following orders:
 - a. That the certificate of confirmation of grant issued to I W N on 28/05/2024 be rectified in the following respect as provided for by Rule 43 (1) of the *Probate and Administration Rules*:
 - i. That the name in the schedule E M K as the only beneficiary of Dundori/LanetBlock 2/105 (Tabuga) be rectified/removed and replaced by others.
 - ii. That shares in Centum Investment Company PLC that were omitted to be included in the schedule as follows: -



NAME OF HEIR	DESCRIPTION OF PROPERTY	SHARE OF HEIR
Isaac Waititu Nderitu Harun Gathema Joseph Nderitu Muito Miriam Wanjiru Nderitu Veronicah Wangari Nderitu Mary Njeri Kariuki Simon Peter Nderitu	Dundori/Lanet Block 2/105 (Tabuga)	Equal Shares
Isaac Waititu Nderitu Harun Gathema Joseph Nderitu Muito Miriam Wanjiru Nderitu Veronicah Wangari Nderitu Mary Njeri Kariuki Simon Peter Nderitu	Centum Investment Company PLC Shares	Equal Shares

- b. That costs of this Application be in the cause.
2. The application is anchored upon section 74 of the [Law of Succession Act](#) cap 160 and Rule 43(1) of the [Probate and Administration Rules](#). The Application is supported by the Affidavit of I W N, the applicant, sworn on 08/09/2025.
 3. The Applicant is the Administrator of the estate of the deceased having been issued with the grant of letters of Administration on 28/05/2024. According to the Applicant, the children of the deceased agreed that the only asset of the deceased Title Deed No. Dundori/Lanet/Block 2/105 (Tabuga) be transmitted to their mother E M K to hold the same in trust for her children. That before the transmission of the land parcel could be effected in the name of their mother, she passed away on 02/10/2024. That the beneficiaries of the estate have now consented that the said grant be rectified and all the children of the deceased do share the only property in the estate in equal shares. That shares in Centum Investment Company PLC were omitted and they would wish the same to be included in their father's estate and be shared equally by all the beneficiaries. That they therefore pray for rectification of confirmation of grant on the part of the schedule be rectified as prayed hereinabove.
 4. Section 74 of the [Law of Succession Act](#) provides that 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. Rule 43(1) of the [Probate and Administration Rules](#) provides that: -

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 shall apply by summons.
 5. Rectification of a grant of Letters of Administration is therefore limited to matters set out under Section 74 of the [Law of Succession Act](#). Under this provision rectification of grant deals specifically



with correction of error which the court may order without changing the substance of the grant. This includes errors in names, description of any person or thing or an error as to the time or place of death of the deceased or the purpose for which a limited grant was issued. An error which is visualized under the Section is a mistake which may occur on the face of the grant like typing errors in names of persons or the things. A rectification seeking to include properties which were not in the schedule of the assets when filing the cause and not included in the grant may not fit in the matters provided under Section 74 of the Act. Further, a rectification that seeks to redistribute properties does not also fit in the matters provided under the section.

6. In the matter of the placeholder-RG6uB *Estate of Hasalon Mwangi Kabero* [2013] eKLR, the court stated;

An error is essentially a mistake. For the purposes of Section 74 and Rule 43, it must relate to a name or description or time and place of the deceased's death, or the purpose of a limited grant. Is an omission of a name or in the description of a thing an error? It would be an error if say a word in the full name of a person is omitted or a word or number or figure in a description is omitted. But where the full name of a person or a full description of a thing or property is omitted, it would be stretching the meaning of the word "error" too far to say that that would amount to the error or mistake envisaged in Section 74 and Rule 43. (mine emphasis).

7. In the matter of the *estate of Geoffrey Kinuthia Nyamwinga (deceased)* [2013] eKLR, the court stated;

The law on rectification or alteration of grants is Section 74 of the *Law of Succession Act* and Rule 43 of the Probate and Administration Rules..... What these provisions mean is that errors may be rectified by the court where they relate to names or descriptions, or setting out of the time or place of the deceased's death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general.....Where a proposed amendment of a grant cannot be dealt with under the provisions of section 74 of the *Law of Succession Act*, the applicant ought to approach the court under order 44 of the *Civil Procedure Rules*. A review under order 44 of the *Civil Procedure Rules* may be sought upon 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. The applicant in this case should have moved the court under this provision – order 44 of the *Civil Procedure Rules* on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant.

8. In *re estate of Charles Kibe Karanja (deceased)* [2015] eKLR, the court stated;

If a party wishes to have the assets of the estate redistributed or there is discovery of new assets that were not available or had not been discovered at the time of distribution, among others; it would be imprudent to seek rectification or alteration or amendment of the certificate of confirmation of grant. Such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be affected without touching the orders made by the Court at the distribution of the estate. Consequently, such changes cannot and should not be effected through a mere amendment of the certificate of confirmation of grant. The proper approach ought to be an application for review of the orders made at the confirmation of the grant. The remedy of review of Court orders is not directly provided for in the *Law of Succession Act* and the Probate and Administration Rules, but it is imported into probate practice by Rule 63 of *Probate and Administration Rules*, which has adopted a number of procedures



from the Civil Procedure Rules.....Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiaries on the basis that the said assets or heirs were left out by mistake or error. Where assets are discovered after the Court has confirmed the grant or an heir or survivor of the deceased who had previously been unheard of materializes after distribution, the Court may review its orders made at the point of confirming the grant on the ground of discovery of new and important evidence that was not available at the time the grant was being confirmed.....New assets cannot be introduced and distributed by merely rectifying the certificate of confirmation of grant. That calls for going back to the distribution orders, so as to have them altered or revised. (mine emphasis).

9. There is harmony in the above decisions that rectification of grant deals with correction of errors and/or mistakes in names and description. A party seeking rectification to bring in assets not originally included in the grant or to redistribute the estate in a manner as sought for herein cannot be said to be seeking rectification.
10. The Applicant in this case has stated that he omitted some of the properties from the onset, during the filing of the Petition for Grant of letters of Administration. Seeking to add the Centum Investment Company PLC shares and to redistribute the entire estate herein is a substantial amendment which cannot be handled by rectification under Section 74 of the Law of Succession Act. The Applicant would be required to produce evidence as to whether the omitted properties belonged to the deceased and give a proper account as to why the properties were omitted from the beginning.
11. As held by Ogola, J., in In re Estate of John Ngacha Ng'ang'a (Deceased) [2023] KEHC 19462 (KLR), the Applicant could perhaps consider seeking a review. In consideration of the above, the Application dated 08/09/2025 is not allowed. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 27th DAY Of January 2026.

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

Ruling delivered online the presence of:

Ndolo for the Applicant

Wanyoike/ Beline - Court Assistants

Applicant: n/a

Beneficiaries: n/a

