

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**SUCCESSION CAUSE NO 17 OF 2003**

**IN THE MATTER OF THE ESTATE OF THE LATE JOSEPH KIPSONGOK**  
**RUTTO (DECEASED)**

**CYNTHIA CHERUTO.....APPLICANT**

**Coram: Before Justice R. Nyakundi**  
**M/s Kipkosgei & Co Advocates**

**RULING**

1. Before this court is summons for rectification of grant dated 25<sup>th</sup> November 2025 brought under Section 56, 58, 66, 75A, 81 of the Law of Succession Act & Rule 73 of the Probate and Administration Rules where the Applicant is seeking the following orders: -
  - a. *That the administrator herein Daniel Kiplagat Rotich now deceased be substituted with Cynthia Cheruto.*
  - b. *That certificate of confirmation of grant dated 13/10/2003 be amended on the schedule by deleting the name of Daniel Kiplagat Rotich and substituting the same with Cynthia Cheruto.*
  - c. *That costs of this application be in the cause.*
2. In support of the application is the annexed affidavit of one Cynthia Cheruto who deponed as follows:
  - a. *That I am the sole beneficiary of the estate of the late Joseph Kipsongok Rutto.*
  - b. *That, the administrator of the estate herein Daniel Kiplagat Rotich passed on 13/4/2019.*
  - c. *That the said administrator having passed on, it is in the interest of justice and that of the estate that substitution do occur.*

- d. *That, the said administrator was given my whole share of the estate to hold it in trust on the ground that I was still a minor at the time of confirmation of grant.*
- e. *That I am now an adult aged 27 years and I would request that my share of the estate be given under my names for registration to issue under my name.*
- f. *That the facts deponed herein are true and the same has been corroborated by my Area Chief as per his letter dated 11/4/2025.*
- g. *That in view of the foregoing it is fair and just that this application be allowed.*

## **Decision**

3. This application is based on the death of the administrator namely Daniel Kiplagat Rotich rendering the grant to be useless and inoperative. There is therefore need to invoke the provisions of section 76 of the law of succession Act, Rule 73(1) of the Probate and Administration Rules, Section 80 of the CPA and Order 45 Rule 1 of the CPR. In terms of review of Order 45 Rule 1 of the CPR it provides as follows:

*(1) Any person considering himself aggrieved—*

*(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or*

*(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.*

*(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.*

4. This certificate of confirmation of grant issued to the deceased administrator has no legal effect unless and until a new appointment of an administrator has taken place so that he can proceed to complete the transmission of the estate and avail the probate account under Section 83 (g). In the case of the **re Estate of Prisca Ong'ayo Nande (deceased) [20220] eKLR** the court made the following observations:

*“Under section 76, a court may revoke a grant so long as the grounds listed above are disclosed, either on its motion or on the application of a party. A grant of letters of administration may be revoked on three general grounds. The first is where the process of obtaining the grant was attended by problems. The first would be where the process was defective, either because some mandatory procedural step was omitted, or the persons applying for representation was not competent or suitable for appointment, or the deceased died testate having made a valid will and then a grant or letters of administration intestate was made instead of a grant of probate, or vice versa. It could also be that the process was marred by fraud and misrepresentation or concealment of matter, such as where some survivors are not disclosed or the applicant lies that he is a survivor when he is not, among other reasons. The second general ground is where the grant was obtained procedurally, but the administrator, thereafter, got into problems with the exercise of administration, such as where he fails to apply for confirmation of grant within the time allowed, or he fails to proceed diligently with administration, or fails to render accounts as*

*and when required. The third general ground is where the grant has become useless and inoperative following subsequent circumstances, such as where a sole administrator dies leaving behind no administrator to carry on the exercise, or where the sole administrator loses the soundness of his mind for whatever reason or even becomes physically infirm to an extent of being unable to carry out his duties as administrator, or the sole administrator is adjudged bankrupt and, therefore, becomes unqualified to hold any office of trust.”*

5. Besides the provision of Section 76 of the Law of Succession Act, the evidence on the death of the deceased administrator gives rise to review the impugned grant on grounds that there is new compelling discovered evidence arising out of the death of the deceased who was the sole administrator of the estate and as such without amendment and substitution of the administrator the legal instrument would be rendered inoperative. The core principal for review of a ruling or judgement include the following under Order 45 Rule 1 of the Civil Procedure Rules:
  - a) **Discovery of new evidence:** *review is permissible if new and important matter/evidence is discovered matter/evidence is discovered which, after the exercise of due diligence, was not within the knowledge of the party or could not be produced at the time the decree/order was passed.*
  - b) **Error apparent on the face of the record:** *The error must be self-evident and not require a long-drawn process of reasoning to be established.*
  - c) **Other sufficient reason:** *This principle has been interpreted to mean a reason "analogous to the other conditions" in the rule (i.e., errors similar to those apparent on the record).*
  - d) **No reviews on merits/hearing:** *A review cannot be maintained merely because a different view is possible on the same evidence*

6. There are no sufficient reasons being reasons analogous to those specified under Order 45 Rule 1 of the Civil Procedure Rules as discernible from the Applicant's affidavit. However, it is noted that the administrator Daniel is deceased. Justice, being a virtue that transcends all barriers, ought to prevail. Notwithstanding the statutory provisions of Section 76 of the Law of Succession Act and Order 45 Rule 1 of the Civil Procedure Rules, neither procedural rules nor technicalities of law should hinder the Court from granting an appropriate remedy in the circumstances of this case. Accordingly, it is proper for the Court to review and set aside the appointment of Daniel (now deceased) and substitute him with Cynthia Cheruto alias Jeruto Ruto, as reflected in the impugned Certificate of Confirmation of Grant dated 13<sup>th</sup> October 2003. In the result the application succeeds as prayed. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 2<sup>ND</sup> DAY  
OF APRIL 2026**

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**R. NYAKUNDI  
JUDGE**