



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Chemurgoi alias Masai Kipendo (Deceased) (Succession Cause 28 of 2017) [2026] KEHC 4697 (KLR) (13 April 2026) (Ruling)

Neutral citation: [2026] KEHC 4697 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 28 OF 2017**

RN NYAKUNDI, J

APRIL 13, 2026

**IN THE MATTER OF THE ESTATE OF MASAI KIPENDO
CHEMURGOI ALIAS MASAI KIPENDO-DECEASED**

RULING

1. Before this Court is an application dated 20th January 2026. The Applicant seeks the following orders;
 - a. Spent
 - b. That the certificate of confirmation of grant issued on 18th July 2024 be rectified and or amended by deleting item No. 16 on the schedule and maintain No. 25 showing land parcel No. MOSOP/CHEPKORIO/326 devolves to Samson Kibet Chelimo.
2. The Application is supported by an Affidavit by David Kipchumba Kipendo and Francis Kipkoech Kiplagat who deponed as follows;
 - a. That we are the Administrators of the estate of Masai Kibendo Chemurgoi.
 - b. That the grant was confirmed on 18th/7/2024 where among properties devolved was land parcel No. MOSOP/CHEPKORIO/326 was devolved twice in favour of David Kipchirchir Kipendo being No. 16 on the certificate and also devolved to Samson Kibet Chelimo being No. 25 on the list.
 - c. That there has arisen an error as the property cannot be transmitted due to the property appearing twice.
 - d. That the devolution of the property to David Kipchirchir Kipendo was erroneous.
 - e. That we thus pray that the certificate of grant be rectified by deleting item No. 16 showing land parcel No. MOSOP CHEPKORIO/326 and retain that to Samson Kibet Chelimo.



Decision

3. The remedy on rectification of grant is provided for under Section 74 of the [Law of Succession Act](#) as read with Rule 43 (1) and 73 of the P&A Rules. What is Rectification of Grant, and when is it appropriate? Rectification of a grant is a legal process under Section 74 of the [Law of Succession Act](#) and Rule 43 of the Probate and Administration Rules, which allows the Court to correct minor specific errors in a grant of representation or a certificate of confirmation. Courts have held that an error is essentially a mistake. That mistake, however, must fall within the ambit of Section 74 of the [Law of Succession Act](#) and Probate and Administration Rules 43 of the Probate and Administration Rules.

Under the [Law of Succession Act](#), rectification is appropriate only where the grant contains:
Errors in names or descriptions of persons or things; Errors in setting forth the time and place of the deceased's death; Errors regarding the purpose of a limited grant.

4. The context of this summons for rectification touching on the confirmation of grant issued on 20th December 1999 is a mixed grill of both rectification and review. What is a Review of Grant, and When Should It Be Sought?

A review of a grant is governed by Order 45 of the Civil Procedure Rules, Section 80 of the [Civil Procedure Act](#), and is imported into succession law by Rule 63 of the Probate and Administration Rules. Review is the appropriate remedy when:

There is the discovery of new and important matter or evidence, which was not within the Applicant's knowledge or could not be produced at the time of the grant's confirmation; There is a mistake or error apparent on the face of the record (but the error does not fall within Section 74); or For any other sufficient reason.

5. These two typologies are mostly litigated post-confirmation of grant. This has necessitated the Probate Courts to interpret and construe the deferential minimum and maximum as between the doctrine of rectification with that of review as demonstrated by the following case law: In Re Estate of John Omae Nyangweso (deceased) KEHC 4924 The Court held that rectification is limited to correcting errors in names, descriptions, or minor clerical details. Introducing new assets or beneficiaries must be done by applying for review or seeking a fresh confirmation of grant.

“Rectification of a grant is limited to correction of errors in names or descriptions, or in setting out the time and place of the deceased's death, or the purpose in a limited grant... Notably, inclusion of omitted beneficiaries or assets does not fall within the scope of rectification and must be canvassed through review or fresh confirmation proceedings.”

In the Matter of the estate of Geoffrey Kinuthia Nyamwinga (deceased) KEHC E3745 KLR Justice W. Musyoka found that correcting clerical errors in property descriptions falls under rectification, but including omitted assets requires an application for review under Order 45 Civil Procedure Rules, as imported by Rule 63. The Court stated as follows: –

“A grant and a certificate of confirmation of grant are Court orders taking the form of a certificate. The grant is made after the Court allows the petition for a grant of representation, whether it be of letters or of probate. A certificate of confirmation of grant is issued following a successful application for confirmation of the grant. The two are not pleadings, and therefore the principles which govern their rectification are not those applying to amendment of pleadings but those that apply to amendment of Court orders”.



“A Court order made by a civil Court can only be amended through a review application, and not through an application for amendment of pleadings. The Law of Succession Act does not provide for amendment of pleadings in succession causes, but it does provide amendment of grants. This is through either Section 74 of the Law of Succession Act to the extent provided in that provision, or through a review application through Order 45 of the Civil Procedure Rules. Order 45 was formerly Order XLV, which is one of the provisions of the Civil Procedure Rules imported into succession practice through Rule 63 of the Probate and Administration Rules”

“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 – the omission of the two properties from the confirmation application and the certificate of grant respectively.”

6. The doctrine of rectification is an equitable remedy that allows a Court to correct or amend a written instrument such as a contract, deed, or trust to ensure it accurately reflects the true, shared intentions of the parties involved. Because it is a remedy founded in equity rather than common law, it is discretionary, meaning the Court will only grant it when is fair and necessary to prevent unconscionable reliance on an incorrect document.
7. I have considered the application and the supporting affidavit and based on the above principles the application for amendment and the same be in consonant with the summons namely: that Clause No. 16 be deleted for it is an overlap with Clause No. 25 of the certificate of confirmation of grant. With this amendment the Deputy Registrar to issue a further amended certificate of confirmation of grant.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 13TH APRIL 2026.

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R. NYAKUNDI
JUDGE

