



**In re Estate of Cheruiyot (Deceased) (Succession Cause
108 of 2015) [2026] KEHC 4659 (KLR) (13 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4659 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 108 OF 2015
RN NYAKUNDI, J
APRIL 13, 2026
IN THE MATTER OF THE ESTATE OF THE LATE
SIMON TUITOEK CHERUIYOT (DECEASED)**

IN THE MATTER OF

**PETER KIPCHUMBA TUITOEK 1ST PETITIONER
VERONICA CHEROTICH CHERUIYOT 2ND PETITIONER**

RULING

1. Before this Court is an Application dated 9th February 2026 brought under Sections 47 & 74 of the *Law of Succession Act*, Cap 160 and Rules 43, 63 and 73 of Probate & Administration Rules and Order 45 of the Civil Procedure Rules. The Applicants moved this Court seeking the following orders;
 - a. That the Certificate of Confirmation of Grant issued on 3rd August 2018 be amended.
 - b. That the distribution of land parcel Tulwet/Tulwet Block 6 (Bayete) 63 be rectified as per the mode of distribution.
2. The Application is made on the following grounds;
 - a. That the Petitioners are the Administrators to the Estate herein in their capacity as children to the deceased.
 - b. That among the properties owned by the deceased was the land parcel Tulwet/Tulwet Block 6 (Bayete) 63 measuring 10.88Ha (26.8 Acres)
 - c. That at the time of filing the Petition for Grant of Letters of Administration and its confirmation, it was agreed by the family that 13.4 Acres out of the above land parcel would be jointly owned by the deceased's children.



- d. That this agreement was arrived at by consent owing to the fact that the Administrators do not reside on the land parcel.
 - e. That recently the Administrators were approached by persons who purchased various portions of the 13.4 Acres from the deceased and requested them to process titles for this portion
 - f. That it is necessary the distribution of this property be reviewed and adjusted accordingly to enable accession of the Estate to the rightful beneficiaries.
 - g. That this application has been filed promptly and in the best interest of justice to finalize distribution of the estate.
3. The Application is supported by Affidavit sworn by the Applicant who deponed as follows;
- a. That I am a daughter to the deceased herein and an Administrator hence competent to swear this affidavit.
 - b. That the Administrators to the Estate of the late SIMON TUITOEK CHERUIYOT, to whom these proceedings relate were appointed by this Honorable Court on 18th January 2016.
 - c. That the above Grant of Letters of Administration to the Estate was confirmed on 3rd August 2018 and a Certificate of Confirmation of Grant was issued forthwith.
 - d. That at the time of filing both the Petition for Grant of Letters of Administration and Summons for Confirmation of Grant, the Land parcel Tulwet/Tulwet Block 6 (Bayete) 63 measuring 10.88Ha was included in the List of Assets, and it was agreed that 3 of my siblings and I would jointly own 13.4 Acres out of this parcel.
 - e. That neither my siblings nor I reside on this land parcel.
 - f. That recently my siblings and I were approached by three purchasers claiming interest in this share of land having bought it from the deceased in the early 2000s.
 - g. That after much investigation and deliberation, my siblings and I agreed to move this Honorable Court to seek an Order for Rectification of Grant to include their names as beneficiaries by purchase.
 - h. That my siblings and I were yet to transfer title to ourselves by transmission after the Certificate of Confirmation of Grant was issued on 3rd August 2018.
 - i. That it is necessary that the Certificate of Confirmation of Grant be amended in order to cater to the interests of the rightful purchasers of this land.
 - j. That my siblings and I have executed the attached Consent on this amendment and thus there is no contention.
 - k. That in the absence of an amended grant, succession of the Estate of the deceased will be halted.
 - l. That this Summons for Rectification and/or Amendment of Grant is merited and has been filed in good faith and I pray it be allowed accordingly.
 - m. That all facts deposed herein are true to the best of my knowledge, information and belief, save and except where otherwise expressly stated.



Decision

4. On 18th January 2016 the Court issued Grant of Letters Administration Intestate to Peter Kipchumba Tuitoek and Veronica Cherotich Cheruiyot both of P.O Box 207, Kapsabet. They covenanted to undertake faithfully to administer the estate according to law and to render a just and true account thereof whenever required by law to do so.
5. Thereafter a Certificate of Confirmation of Grant was issued on 3rd August 2018 detailing the following distribution matrix of the estate to the beneficiaries as follows:

Name of Beneficiaries	Description of Property	Shares
Margaret Limo Birai Veronica Cherotich Cheruiyot Peter Kipchumba Tuitoek Lilian Chebet	Nandi/Kamobo/1351	To be shared equally
Justus Kibet Cheruiyot Isaack Ngetich (Purchasers)	Tulwet/Tulwet Block 6 (Bayete)	5.0 Acres Each

The remaining 13.4 acres thereof shall be jointly owned by the said:

- i. Margaret Limo Birai
 - ii. Veronica Cherotich Cheruiyot
 - iii. Peter Kipchumba Tuitoek
 - iv. Lilian Chebet
6. Following this confirmation of grant the applicant filed summons of rectification/amendment of the certificate of confirmation to bring clarity to the issues on sharing of the estate. The gist of the amendment is based on various sale agreements to dispose of the part of the estate to the purchasers namely:
 - a. Justus Kibet Cheruiyot 5 acres
 - b. Isaack Ngetich 3 Acres
 - c. Nancy Cheronon Ngetich 13 Acres
 - d. Daniel Kipkemboi Metto 3.5 Acres
 7. The Applicants have invoked the Court jurisdiction under Section 74 of the *Law of Succession Act* as read with Rules 43, 63, & 73 of the P&A Rules but from the material evidence this is a matter which falls squarely under Section 80 of the CPA as read with Order 45 of the CPR. The interpretation and construction of these provisions have been put to rest by the Court of Appeal in *Nyamogo and Nyamogo Advocates Vs. Kago* (2001) 1EA 173. Thus:

“An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a merely erroneous decision and an error apparent on the record. Where an error on a substantial



point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for review although it may be for an appeal.” See also National Bank of Kenya Vs. Ndungu Njau, Civil Appeal No. 211 of 1996,

8. In my considered view the certificate of confirmation of grant issued to the Administrators be reviewed on grounds of sufficient cause and discovery of new evidence. As a consequence, the Deputy Registrar of the High Court do move to issue and amended the grant of confirmation to reflect the new terms of distribution of the estate as covenanted by the Administrators and beneficiaries.

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

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R. NYAKUNDI

JUDGE

