

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE NO. 50 OF 2015

IN THE MATTER OF THE ESTATE OF KIPSANGA KILUGU (DECEASED)

THROUGH

SAMMY KIPLAGAT

SANGA.....PETITIONER/APPLICANT

Coram: Before Justice R. Nyakundi

RULING

1. Before this Court is summons for rectification of certificate of confirmation of grant issued on 20/12/1999 brought pursuant to Article 159 of the Constitution 2010, Section 74 of the Succession Act, Cap 160, Rule 43 of the Probate and Administration Rules and all enabling provisions of the laws of Kenya. This application dated on 28th November 2025 is seeking the following orders:
 - a. *The Certificate for confirmation of Grant issued to the said Sammy Kiplagat Sanga in this matter on the 16-07-2019 be rectified pursuant to Rule 43 (1) of the Probate and Administration Rules in that the schedule to the said Certificate of Confirmation of Grant be altered and amended to correct the names of the beneficiaries so as to reflect the correct ones by deleting the name of Joseph Kimagut Sitienei and Wisdom Kibet and replace with Julius Kipkurgat Sitienei and Alfred Kiptoo Keter.*
 - b. *The Certificate for confirmation of Grant issued to the said Sammy Kiplagat Sanga in this matter on the 16-07-2019 be rectified pursuant to Rule 43 (1) of the Probate and Administration Rules in that the*

schedule to the said Certificate of Confirmation of Grant be altered and amended as per the under listed table;

AMENDED SCHEDULE

Property	Heir	Share
<i>Ngeria/Chepyakwai Block2(Kaplelach)/156 Measuring Approximately 9.890 Ha</i>	<i>Philip Sanga</i>	<i>1.33 Ha</i>
<i>Ngeria/Chepyakwai Block2(Kaplelach)/156 Measuring Approximately 9.890 Ha</i>	<i>Alfred Kiptoo Keter</i>	<i>6.92 Ha</i>
<i>Ngeria/Chepyakwai Block2(Kaplelach)/156 Measuring Approximately 9.890 Ha</i>	<i>Julius Kipkurgat Sitienei</i>	<i>1.59 Ha</i>
<i>Ngeria/Chepyakwai Block2(Kaplelach)/156 Measuring Approximately 9.890 Ha</i>	<i>Road Reserve</i>	<i>0.138 Ha</i>

2. This application is based on the following grounds:

- a. *Two of the beneficiaries, Joseph Kimagut Sitienei and Wisdom Kibet have since sold his shares excised out of Ngeria/Chepyakwai Block 2 (Kaplelach)/156measuring approximately 9.890 Ha to Julius Kipkurgat Sitienei and Alfred Kiptoo Keter.*
- b. *Ngeria/Chepyakwai Block 2 (Kaplelach)/156 measuring approximately 9.890 Ha is currently registered in the name of the deceased herein Kipsanga Kilugu as per the current Certificate of Official Search.*
- c. *The orders sought herein shall not in any way cause anyone to suffer prejudice. The errors were typographical errors and were inadvertently committed.*

- d. *The application is necessitated by the need to preserve the estate of the deceased in the interest of the beneficiaries herein.*
 - e. *The orders sought shall not in any way prejudice or cause anyone to suffer prejudice and the application has been made bona fides.*
 - f. *It is just and fair that the Certificate of Confirmation of Grant issued on 16-07-2019 be rectified, altered and amended to incorporate the above stated information and/or particulars.*
3. In support of the application is the annexed affidavit sworn by one Sammy Kiplagat Sanga who deposed as follows:
- a. *The Court appointed the Petitioner herein as Administrator in the estate of the late Kipsanga Kilugu (Deceased) having been issued with Grant of Letters of Administration Intestate issued herein on 15-06-2015 hence competent to make and swear this affidavit.*
 - b. *The deceased herein Kipsanga Kilugu died on 20-04-2001 intestate.*
 - c. *The property known as Ngeria/Chepyakwai Block 2 (Kaplalach)/156 measuring approximately 9.890 Ha is still registered in the name of Kipsanga Kilugu the deceased herein as at 19-11-2024.*
 - d. *The Grant of Letters of Administration Intestate issued herein on 15-06-2015 was confirmed on 12-07-2015 and Certificate of Confirmation issued on 16.07.2019 distributing the capital assets of the deceased between Dr. Joseph Kimagut Sitienei, Widom Kibet and Philip Sanga*
 - e. *Subsequently Dr. Joseph Kimagut Sitienei, Widom Kibet disposed of their shares in Ngeria/Chepyakwai Block 2 (Kaplalach)/156 measuring approximately 9.890 Ha to Hon. Alfred Kiptoo Keter and Julius Kipkurgat Sitienei.*
 - f. *I confirm I am unable to process titles excised out of Ngeria/Chepyakwai Block 2(Kaplalach)/156 measuring approximately 9.890 Ha to Hon. Alfred Kiptoo Keter and Julius Kipkurgat Sitienei since their names do not appear in the Certificate of Confirmation of Grant as confirmed by the Geomatician Licensed Land Surveyor in their letter dated 02-11-2024.*

- g. Dr. Joseph Kimagut Sitienei, Widom Kibet names appear in the Certificate of Confirmation issued on 16-07-2019 hence there is need to rectify the Certificate of Confirmation of Grant to reflect the particulars of the current heirs/ purchasers.*
- h. The Petitioner is unable to process titles in favour of the beneficiaries herein with the certificate of confirmation of grant issued as is and fulfil his statutory obligations under Sections 82 and 83 of the Succession Act CAP 160.*
- i. It is therefore necessary to rectify the Certificate of Confirmation of Grant to reflect the particulars of all the beneficiaries and particulars of the properties to enable the estate devolve to the beneficiaries.*
- j. I will diligently distribute the estate and account to Court in accordance to the Law of Succession CAP 160, the Trustees Act and Trustees (Perpetual Succession) Act Laws of Kenya.*
- k. I make this application in good faith and I verily believe that there is no person that is likely to be prejudiced by the order sought in the application filed together herewith.*
- l. The children of the deceased have signed consent in support of the application.*
- m. It is just and fair that the Certificate of Confirmation of Grant issued on 20.12.1999 be rectified, altered and amended to incorporate particulars of Hon. Alfred Kiptoo Keter and Julius Kipkurgat Sitienei.*
- n. Allowing this application will greatly avert an injustice.*

Decision

- 4. The summons for rectification of grant in our jurisdiction is provided for under Section 74 of the Act and Rule 43(1) of the Probate & Administration 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.*

5. 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.*

6. 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.”

7. In Kenya, review of judgment or ruling based on error apparent on the face of a record, self-evident mistake, sufficient cause and discovery of new evidence is provided for Under Section 80 of the CPA and Order 45 Rule 1 of the CPR. A review cannot be substituted for an appeal or simply because another Judge may have reached another conclusion. The other fundamental principles are that the Applicant must show sufficient cause or reasons or newly discovered evidence to have the ruling reviewed so that the decision is equitable and just.
8. The Courts have navigated these provisions as demonstrated by the following authorities:
 - ***National Bank of Kenya vs. Ndungu Njau (1996) eKLR (Civil Appeal 211 of 1996)***: This landmark ruling emphasizes that an error must be apparent on the record itself, not an erroneous conclusion of law or misconstruction of a statute.

- ***Wangechi Kimita and Another v Mutahi Wakabiru [1980-88] 1KAR 977***: Confirmed that review can be granted for "other sufficient reasons," which need not be restricted to the discovery of new evidence or errors of record.
- ***Commissioner of Domestic Taxes vs. W.E.C Lines Kenya Limited (2022) eKLR (Ruling)***: Held that the phrase "or any sufficient reason" gives Courts discretion to review cases in the interest of justice, extending beyond narrow legal errors.
- ***Ithiga v Mwangi (Environment & Land Case 170 of 2014) [2025] KEELC***: Defined "sufficient cause" as a "good cause" requirement that justifies reversing or modifying a Court order, imposing a burden on the applicant to explain the necessity of the review.
- ***Justus Chania Lyunga vs. Standard Chartered Bank Limited (2013) eKLR***: Addressed the scope of setting aside judgements and the threshold for mistake.

9. What the law speaks about on review is that it is not maintainable if the error requires a long drawn process of reasoning. The Courts availed again and again that review proceedings are not by way of an appeal and have to be strictly confined to the scope ambit of Order 45 Rule 1 of the CPR. The power of review may also be excised when some mistakes or error apparent on the face of the record is found. But error on the face of the record must be such an error which might strike one on mere looking at the record without any further analysis or scrutiny of the evidence.

10. Applying the law laid down by the Courts in the foresaid decisions to the facts of the case on hand, I exercise discretion to review the certificate of confirmation of grant issued to Sammy Kiplagat Sanga on 16th July 2019. First, the terms of review are that the name of Joseph Kimagut Sitienei and Wisdom Kibet be deleted and replaced with Julius Kipkurgat Sitienei and Alfred Kiptoo Keter. Second the amended schedule in support of the summons be adopted and all its terms to review the certificate of confirmation of grant. With this the Deputy Registrar of the

High Court be and is hereby directed to implement this ruling to the latter.

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

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R. NYAKUNDI

JUDGE