



**In re Estate of Tiony (Deceased) (Succession Cause 30 of 2017)
[2026] KEHC 4681 (KLR) (13 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4681 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 30 OF 2017
RN NYAKUNDI, J
APRIL 13, 2026**

IN THE MATTER OF

**ANN MUTAI 1ST ADMINISTRATOR
PRISCA TIONY 2ND ADMINISTRATOR
EZEKIEL KIBET TUM 3RD ADMINISTRATOR
JOSEPHAT KIPCHUMBA BIAMA 4TH ADMINISTRATOR**

RULING

1. Before this Court is an Application dated 9th February 2026 brought under Section 81 of the *Law of Succession Act*, Rule 43 (1) & 73 of the Probate and Administration Rules, Article 159 of *the Constitution* of Kenya 2010 and all other enabling provisions. The Applicants moved this Court seeking the following orders;
 - a. That this Application be certified as Urgent and the service thereof be dispensed with in the first instance.
 - b. That the Grant of Letters of Administration with Written Will annexed issued to Prisca Tiony, Ezekiel Kibet Tum, Josephat Kipchumba Biama And Ann Mutai (deceased) on the 12th October 2022 together with the Certificate of Confirmation of Grant be rectified to remove the name of one of the Co-Administrators the late Ann Mutai from the Grant.
 - c. Upon the grant of (b) above an amended Grant and Certificate of Confirmation of Grant be issued.
 - d. That the cost of this Application shall be provided for
2. The Application is made on the following grounds;



- a. The succession proceedings instituted in this matter being petition for the succession of the estate of the said late Kimutai Tiony was heard, concluded and Grant of Letters of Administration with written will annexed was issued on the 12th October 2022.
 - b. One of the co-administrators, Ann Mutai (Deceased), unfortunately passed on after the Grant of the Letters of Administration with written will annexed and as such the need for amendment to remove the name of the deceased administrator from the Grant.
 - c. The surviving co-administrators had submitted a copy of the late Kimutai Tiony (Deceased) Title of parcel of land known as Sergoit/Koiwaptaoi Block 2 (Senetwet)/21 to the Agricultural Finance Corporation and the Title is still under their custody.
 - d. That there is need to continue with the administration of the estate of the late Kimuta Tiony (Deceased) by allowing the surviving administrators to continue administering the said estate.
 - e. The Grant of Letters of Administration with written will annexed has been rendered inoperative since the surviving Co-Administrators are unable to administer the estate and more specifically the parcel of land known as Sergoit/Koiwaptaoi Block 2 (Senetwet)/21 due to the inoperativeness of the Grant of Letters of Administrator with written will annexed issued on the 12th October 2022.
 - f. There is need for the Court record to be updated to reflect the aforementioned changes so as to allow the surviving Co-Administrators to continue administering the estate of the late Kimutai Tiony as prescribed by the law.
 - g. That it is in the interest of justice that the present application be allowed as prayed.
3. The Application is supported by an Affidavit of one Ezekiel Kibet Tum who deponed and stated as follows;
- a. That I am one of the Administrator/Applicant herein of the Estate of the late Kimta Tiony (Deceased) who died on the 2nd July 2014 and I swear this Affidavit on behalf of the surviving Co-Administrators/Applicants herein.
 - b. The understand present application has been read over to me and explained to me, as such the import of the said Application.
 - c. Those succession proceedings in this matter were heard and concluded and a Grant of Letters of Administration with Will annexed issued to Ann Mutai (Deceased) Prisca " Tiony, Josephat Kipchumba Biama and myself.
 - d. That one of the Administrators i.e. Ann Mutai (Deceased) herein has demised since hence leading to the Grant of Letters of Administration with Written Will annexed that as exhibit was issued on 12th October 2022 becoming inoperative
 - e. That we, the surviving Administrators/Applicants have been unable to continue administering the estate of the late Kimutai Tiony (Deceased) and more specifically to retrieve the Title of the parcel of land known as Sergoit/Koiwaptaoi Block 2(Senetwet)/21 which is in the custody of the Agricultural Finance Corporation, who insist on the need to have the Grant of Letters of Administration Amended to remove the deceased Administrator from the Grant of Letters of Administration.
 - f. That I'm advised by my advocate on record that the application has been made in the interest of justice and in pursuant to the provisions of Section 80 of the *Law of Succession Act* that upon



the death of one of several Administrators power vest in the surviving Administrators in the event that there were multiple Administrators originally.

- g. That there is an urgent need for the Grant of Letters of Administration as well as the Certificate of Confirmation to be amended so as to remove the names of the deceased administrator Annah Mutai to enable us proceed to complete the process of transfer of the assets to the beneficiaries.
- h. That if the Order sought in the present application are not granted the Administrators/ Applicant's surviving the deceased Administrator herein will not be able to continue administering the estate of the late Kimutai Tiony and more specifically Title of the parcel of land known as Sergoit/Koiwaptaoi Block 2(Senetwet)/21 which is in the custody of the Agricultural Finance Corporation.

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.
- 5. 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.
- 6. 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.

- 7. 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.”



8. 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.”

9. The Court in *Barnes PLC v Hill House Hammond* [2001] EWCA Civ 1334 stated that:

This is the classical process of construction, which owes nothing to any of the recent authorities. It enables the Court to correct an obvious clerical error a document that it may conform with the obvious intention of parties. Although in a loose sense the document is rectified, indeed the process is sometimes referred to as common law of rectification, it is not rectification in the correct sense. It remains an exercise in construction.

10. It is therefore important that rectification be properly understood under Kenya law. The principles of rectification should be as clear and predictable as possible given the importance of rectification of letters of grant or rectification whether confirmed or not. The law has laid down under the Succession Act two conditions must be satisfied: First, there must be a clear mistake or error on the face of the instrument. Secondly it must be clear worth correction ought to be made in order to cure the mistake or error in the instrument. If those conditions are satisfied, then correction is made as a matter of construction.
11. In the instant case having read and appreciate the summons and affidavit in support I have reached a conclusion on the document itself that there is need to have it rectified to create clarity, legality, and the intention of the parties whose rights would be affected by the instrument without rectification.



Therefore, the Deputy Registrar of the High Court shall move to correct those things which are an obvious mistake on the face of the instrument without the slightest difficulties. It is so ordered.

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

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R. NYAKUNDI

JUDGE

