

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
SUCCESSION CAUSE NO E098 OF 2025
IN THE MATTER OF THE ESTATE OF ESTHER CHEPKWONY
(DECEASED)
AND
CHRISTINE JEPKEMBOI KIPTANUI.....PETITIONER/APPLICANT

Coram: Before Justice R. Nyakundi

DIRECTION

1. Before this court are chamber summons brought to this Court pursuant to Section 48 and 74 of the Succession Act and Rules 43 and 73 of the Probate and Administration Rules cap 160 Laws of Kenya.
 - (a) That Service of this application be dispensed with in the first instance
 - (b) That Form P&A 5 be rectified on the schedule of assets to include Safaricom Ltd. shares liabilities to include Reformed Church of East Africa and Tony Kipchirchir & Joy Jebet Maiyo be included as beneficiaries.
 - (c) That Fredrick Maina Koech be appointed as the second Administrator
 - (d) Costs in the cause
2. Which application is grounded upon the following grounds and upon the affidavit sworn by Christine Jepkemoi Kiptanui
 - a) That there was an omission of one of the assets and omission of some of the beneficiaries and liabilities to the estate/
 - b) That the Succession Cause in respect of the late Esther Chepkwony were filed in this Honourable Court by Christine Jepkemoi Kiptanui on the 26th May, 2025 and after going through

the relevant documents and or forms as presented have discovered that the following liabilities i.e. Reformed Church of East Africa were omitted

- c) That so much time has elapsed and that there is need to distribute the estate to the beneficiaries and have the matter brought to a close
- d) That it is in the interest of Justice that the application herein be allowed

DECISION

3. This brief application is seeking a remedy of a rectification of grant which is governed by Section 74 of the Law of Succession Act (cap 160) and Rule 43 of the Probate and Administration rules.
4. What is the scope of rectification in Kenya? Rectification is limited to minor and cannot be used to make substantive changes to the distribution of an estate. It is authorized for:
 - *Errors in names: Misspelling of the deceased, executors, or beneficiaries*
 - *Description: Incorrect, identification of property(e,g wrong title number acreage)*
 - *Death Details: Errors in the time of place of deceased's death*
 - *Limited Grant: Errors regarding the purpose for which a limited grant was made*
5. Rectification of Grants is provided for in Section 74 of the Law of Succession Act, cap 160, Laws of Kenya and Rule 43(1) of the Probate and Administration Rules. Section 74 provides as follows:

*"74 Errors may be rectified by court:
Errors in names and descriptions, or in setting forth the time and place of the decease's death, or the purpose in a limited grant, may be rectified by the court, and the grant or representation, whether before or after confirmation, may be altered and amended accordingly.*

Rules 43 (1) provides as follows:

“Where the holder of a grant seeks pursuant to the provision of Section 74 of the Act rectification of an error in the grant as to the names or descriptions of any person or thing or as to the item or place of death of the deceased or in the case of a limited grant, the purpose for which the grant was made, he shall apply by summons in form 110 for such rectification through the registry and in the cause in which the grant was made.” Rectification is like other equitable remedies, discretionary. Hence relief may be refused if, for example, there has been acquiescence or laches. Further the remedy of rectification becomes inappropriate to the extent that after execution of the documents, other persons have for value and without notice, obtained legal rights that would be detracted from if rectification were ordered and it has been held that similar principles apply in favour of those who have taken equitable interests as opposed to legal interest, for value and without notice.

9. It is necessary on matters of rectification of grant of representation or that one which has been confirmed all the beneficiaries sign a consent to the document effectuating concurrence on the error and mistake which has been detected at the time of his implementation or execution. This remedy on rectification empowers the court of equity to order rectification of documents where it is appropriate to do so pursuant to specific equitable doctrines so as to enforce the terms of the document or for our case the grant of letters of administration.
10. It should be born in mind that the Applicant who is also the petitioner as demonstrated by the way of evidence that P&A5 ought to be rectified on the schedule of assets to include Safaricom limited shares, liabilities, reformed church of East Africa and Tonny Kipchirchir and Joy Kibet Maiyo be included as beneficiaries. On the other hand that Fredrick Maina Koech be admitted as the 2nd administrator.

11. The above prayers were not the ones contemplated by section 74 of the Law of Succession Act as ready with Rule 43 of the Probate and Administration Rules.
12. My take on this is that the prayers sought tend to change the character of the certificate of confirmation of grant and the same is not mere errors and mistakes on the face of the record. The remedy prayed for by the Applicant appropriately falls within the review jurisdiction being governed by Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. What are the grounds under this Provisions that a ruling or judgment or final order of the court or in any event interlocutory order can be reviewed by the session Judge of Magistrate.
 - *Discovery of New and Important Evidence: Evidence that was not within the applicants knowledge or could not be produced at the time of the ruling, despite the exercise of due diligence*
 - *Mistake or Error Apparent on the face of the Record: An error that is self-evident, needing no long argument to establish, or a patent clerical/arithmetical error*
 - *Any Other Sufficient Reason: A reason that is not necessarily analogues to the first two, but it sufficient to warrant review, often interpreted to mean a reason that is similarly compelling in justice.*
13. This area of law has been a subject of litigation as demonstrated by the following authorities:-
 - *Discovery of New and Important Evidence: Evidence that was not within the applicants knowledge or could not be produced at the time of the ruling. Despite the exercise of due diligence.*
 - *Mistake or Error Apparent on the Face of the record: An error that is self-evident, needing no long argument to establish or a patent clerical/arithmetical error*

- *Any other Sufficient Reason: A reason that is not necessarily analogous to the first two, but is sufficient to warrant review, often interpreted to mean a reason that is similarly compelling in justice.*

Discovery of New Evidence (The Ladd v Mashall Principles)

Gachuki & Another v Njenga & 2 Others (2025) KECA 451 (KLR). The court held that to adduce additional evidence, the applicant must show

- *The evidence could not have been obtained with reasonable diligence before/during the trial*
- *The evidence is relevant and would likely have had an important influence on the result*
- *The evidence is credible*
- *Francis Origo & Another v Jacob Kumali Mungala (2005) eKLR confirmed that new evidence must be material and not merely confirmatory.*

Error on the Face of the Record (Law/Fact)

- o *National Bank of Kenya vs Ndungu Njau (1996) eKLR this landmark case established that an error must be self-evident, A review cannot be granted just because another judge might have taken a different view. Misconstruing a statute or arriving at a wrong conclusion of law is a ground for appeal, not review*
- o *Pancras T. Swai v Kenya Breweries Limited (2014) eKLR . Reinforced that an application for review cannot succeed on the basis that the court wrongly applied or failed to apply the law*
- *Any Other sufficient Reason*
 - o *Board of Director New victory School & 7 Others v Ndegwa (2025) KEELC 699 (KLR) Emphasized that review applications must be made without unreasonable delay*

- o Shanzu Investments Limited v Commissioner for Lands (1993) upheld the broad discretion of the court to review its own decision to prevent justice*

14. In terms of this case as a matter of emphasis on the Application of review jurisdiction how it gets contradistinguished with rectification the court in **Nyamongo v Nyamongo Kogo (2001) EA 170** the court discussed what would constitute a long drawn process. It observed as follows: *An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of un definitiveness inherent in its very nature and it must be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of 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 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 possible. Mere error or wrong view is certainly no ground for review though it may be one for appeal.*
15. The additional evidence the court is being asked to admit is not one which fills gaps of the case but is necessary for the court to pronounce its judgment on matters of identification of beneficiaries and the net estate of the deceased. There is therefore merit that the Applicant has established sufficient cause and discovery of new evidence judicially admissible on matters of grant of letters of administration in support of the intestate estate of the deceased.

16. For those reasons the summons dated 18.3.2026 is allowed not on the basis of rectification under Section 74 of the law of Succession Act as read with Rule 43 of the Probate and Administration Rules but the orders are underpinned within the scope of Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. As a consequence the amendment of grant shall be issued by the Deputy Registrar to effect the administration and transmission of the estate of the beneficiaries. It is so ordered.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 10TH
DAY OF APRIL 2026**

.....

R. NYAKUNDI

JUDGE