



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of Mbeya (Deceased) (Succession Cause 387 of 2009)
[2026] KEHC 4994 (KLR) (20 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4994 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 387 OF 2009**

SM MOHOCHI, J

APRIL 20, 2026

IN THE MATTER OF THE ESTATE OF THE LATE PAUL KINGORI MBEYA (DECEASED)

BETWEEN

SALOME NJERI KINGORI ADMINISTRATOR

AND

JOSEPH NJAU KINGORI ADMINISTRATOR

RULING

1. The application before this Court is dated the 7th January 2026 and is seeking the following: -
 - i. Spent
 - ii. That upon granting of prayer 1, this Honorable Court be pleased to review the Rectified Certificate of Confirmation of Grant issued on 4th February, 2019 on the mode of distribution with respect to the following assets which were allocated to the first house:
 - a. Uasin Gishu/kimumu/28
 - b. Othaya Kiahagu/1346
 - c. Othaya Kiahagu/1347
 - d. Othaya Kiahagu/1348
 - e. Plot No. 1169 Wanyororo Farmers Company Ltd
 - iii. That the costs of this application be in the cause.
2. The Application is supported by the sworn affidavit of Joseph Njau Kingori where he deposes that upon review and deliberations with the beneficiaries of the Estate, it became necessary to consider and vary the proposed mode of distribution.



3. That since filing of this succession cause, some beneficiaries of the deceased namely Francis Ngata Kingori, Samuel Wambugu Kingori and Jeremiah Njuguna Kingori have passed away and the beneficiaries of the estate of those deceased beneficiaries have appointed Joel Karumba Ngattah. Paul Kingori Wambugu and Paul Haig Kingori respectively as administrators and proposed administrator.
4. That several meetings to deliberate on the review of the distribution have been made and the Distribution Schedule portrays a true arrangement of distribution borne out of mutual understanding of beneficiaries of the Estate and is based on mutual agreement reached during family discussions.
5. That in respect of the Uasin Gishu/kimumu/28, the beneficiaries engaged a surveyor who came up with a proposed subdivision of 40 plots. That the beneficiaries of the estate engaged in a balloting exercise and the forty (40) plots were distributed equitably amongst the agreed beneficiaries.
6. It is further stated that subsequent balloting were conducted in respect to Othaya Kiahagu/1346, 1347 and 1348 and the said surveyor proposed the following subdivision. i) 1346- Plots A, B, C, D, E, F measuring 0.125 Ha, 1347- PLOTS - G, H, J, K, L, M measuring 0.175 Ha and 1348-Plots - N, P, Q, R, S, T measuring 0.075 Ha
7. That the proposed re-distribution will help in a smooth transmission at the land registries. He added that the current Rectified Certificate of Confirmation of grant indicates that the assets being distributed to either, first house, second house or jointly between the two houses, and that the assets as distributed are incapable of being registered at the land's registry during the transmission stage and thus warrants review.
8. He contended that it is in the interest of Estate and the wider interest of Justice that the Application be allowed.
9. The Application was opposed by the Replying Affidavit sworn on 24th February, 2021 by Salome Njeri Kingori wherein she deposes that the 2nd House was never invited to deliberate consider a review of the Certificate of Confirmation of Grant.
10. That the children of the deceased Paul Kingori Meya are still listed in the Petition and are the only people supposed to directly inherit or benefit from the estate. That the other persons listed in Paragraphs 7, 8 and 9 of the Supporting Affidavit are strangers to the estate and if they are grandchildren, they ought to benefit from the estate of the respective fathers.
11. She added the properties under consideration Othaya/Kiahagu?1346, 1347 and 1348 are still registered in the name of the deceased and cannot be transferred to other parties unless and until they are first transmitted to the Administrators the Administrators will transfer as per the decision of the house.
12. That by a letter dated 11th August, 2020 the Applicant's Advocate wrote the Respondent's advocates to regarding transfer of properties inherited by the 1st House. Subsequently the grandchildren of the deceased wrote a letter dated 17th January, 2020 and their advocate wrong 20th January, 2026 demanding that she executed transfer documents regarding assets available to the first house.
13. She argued that the Applicant has himself to blame for not preparing the correct documents for processing what members of the 1st house need and that the issues raised do not need to be litigated in Court as they are purely administrative in nature guided by the provisions and procedures in the *Law of Succession Act* and the *Land Registration Act*.
14. The Application proceeded orally and parties directed to file submissions. Only the 1st Administrator's submissions are on record



1st Administrator's Submissions.

15. Through counsel, it is submitted that the heading of the Application "Summons" is not provided for in law as it does not specify the intended purposes
16. It is further argued that while the Application has been brought under Rule 63 of the *Probate and Administration Rules* and Order 9 Rule 9 and Order 45 Rule 1 of the Civil Procedure Rules, the Court cannot review distribution of assets under Rule 63. That the Court can rectify, annul or revoke a Grant.
17. It is further submitted that Applicant has not provided consent from all beneficiaries or their legal representatives and can therefore be no agreement among the rightful beneficiaries to change the terms of the existing Grant.
18. Counsel submits that some of the individuals listed in the application are strangers and that Section 39(1) of the *Law of Succession Act* sets out the order of priority for inheritance and the grandchildren of the deceased want to inherit directly.
19. It is argued that that the Court is being asked to sanction an unlawful exercise executed on property still registered in the deceased's name. The subdivisions are null and void and of no effect as they cannot be registered unless the necessary legal procedures are followed.

Analysis and determination

20. I have considered the Summons and the affidavits in support and against as well as the submissions. The Applicant seeks review of the Rectified Certificate of Confirmation of Grant issued on 4th February 2019, specifically on the mode of distribution of certain assets allocated to the first house.
21. Once a grant is confirmed, the estate is often deemed spent and distributed. The issue for determination is whether the application amounts to a proper review of the confirmed grant, and whether redistribution to grandchildren can be sanctioned in this manner.
22. Pursuant to Rule 63 of the Probate and Administration Rules, the Rule imports certain provisions of the Civil Procedure Rules into succession proceedings. A review under Order 45 of the Civil Procedure Rules is limited to discovery of new evidence or error apparent on the face of the record. See *Khisa & another vs Naliaka & another* [2025] KEHC 5797 (KLR).
23. I have looked at the entire application before me and there is nothing that demonstrates that there was an error apparent on the face of the record with respect to the Rectified Confirmed Grant dated 4th February, 2019 nor has the Applicant disclosed that he has discovered new material of great significance that was not available prior that would prejudice distribution of the estate as highlighted in the confirmed grant or prejudice the distribution allocate to the 1st House.
24. The summons has been brought nearly eight (8) years after confirmation of the grant. Such delay undermines the bona fides of the application and militates against reopening succession proceedings that have long been settled. Moreover, the application seeks to vary the distribution in the confirmed grant to accommodate alleged grandchildren, which falls outside the parameters of review.
25. The application is in substance an attempt to introduce new beneficiaries. The grounds lean towards rectification to include heirs of deceased beneficiaries, yet Section 74 of the *Law of Succession Act* only permits rectification to correct clerical errors in names, descriptions or particulars of assets. It does not authorize redistribution or inclusion of new beneficiaries.



26. The Applicant has also introduced names of alleged heirs of deceased beneficiaries without demonstrating their identities or establishing their relationship to the deceased beneficiaries within the required parameters. It is not in dispute that grandchildren can inherit directly from their grandparents upon demise of their parent or if they prove dependency. Even if they are grandchildren of the original deceased, it is insufficient to merely list names.
27. The law is clear. Once a beneficiary dies, their entitlement devolves to their estate. Succession must then be undertaken in respect of that estate and the proper course is to obtain letters of administration for the deceased beneficiary's estate. Only the duly appointed administrator can step into the shoes of the deceased beneficiary. Without such authority, the heirs cannot demand inclusion or even redistribution under the original grant.
28. In view of the foregoing, the Application dated 7th January, 2026 is found to be without merit and is dismissed.
29. This being a family matter there shall be no orders as to costs.
30. Matter to be mentioned before the incoming judge on the 21st May 2026.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU ON THIS 20TH DAY OF APRIL, 2026

MOHOCHI S. M

JUDGE

