



In re Estate of William Changulo Wandabwa (Deceased) (Succession Cause 394 of 2012) [2026] KEHC 5896 (KLR) (29 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5896 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 394 OF 2012**

REA OUGO, J

APRIL 29, 2026

BETWEEN

JUSTUS MURIMI SITUMA OBJECTOR

AND

GERISHOM CHANGULO WANDABWA PETITIONER

RULING

1. The applicant has filed an application to rectify the grant. The application is brought under Section 47 of the Laws of Succession Act, Rule 49, and Rule 73 of the Probate and Administration Rules, and Articles 159(2)(d) and 259 of *the Constitution* of Kenya.
2. The applicant seeks an order to nullify and/or cancel the title deeds resulting from the subdivision of Land Title Number Bokoli/Bokoli/1006. The affected titles are as follows: Land Title Numbers Bokoli/3267-3282. The applicant also seeks that the respondent be directed to process new title deeds in accordance with the certificate of confirmation of grant issued on 7/10/2015. That an order be issued directing the respondent, while executing the certificate of confirmation of grant, to ensure that all access roads are distributed equitably and do not exclusively traverse the applicant's portion, and that costs be in the cause.
3. The application is supported by the applicant's affidavit dated 3rd April, 2025. He explains in detail that the Respondent has failed to implement the grant after it was confirmed. He avers that the title deeds issued do not align with the confirmed grant. He also alleges that the Respondent colluded with the surveyor to ensure that all roads pass through his position.
4. The application was opposed. In his affidavit dated 16th April, 2025, the respondent states that the applicant did not lodge an appeal after the court's ruling on the distribution of the estate. According to the respondent, the court is functus officio because it has pronounced itself on the distribution of the deceased's estate, the certificate of grant has been executed, and the title deeds have been issued. It is



further deposed that the court has limited or is not well placed to determine or warrant the cancellation of any title deed or to further settle any arising road access and boundary disputes. The objector has failed to demonstrate that the purported road access has encroached on his portion.

Determination

5. I have considered the rival affidavits and the parties' oral submissions. It is undisputed that the grant was confirmed by a ruling dated 21st June, 2023, and that a certificate of confirmation of the grant was issued thereafter. The applicant seeks rectification of a grant that has already been implemented. Section 74 of the *Law of Succession Act*, which deals with the rectification of orders, provides that an application for rectification may be made where there are "Errors in names and descriptions, or in setting out the time and place of the deceased's death, or the purpose in a limited grant, whether before or after confirmation, may be altered and amended accordingly."
6. Rule 43 (1) of the Probate and Administration Rules provides:-
 - "(1) Where the holder of a grant seeks pursuant to the provisions 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 time or place of the 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 issued."
7. In the Matter of the Estate of Geoffrey Kinuthia Nyamwinga (Deceased) [2013] eKLR, the court held as follows:-

"The law on rectification or alteration of grants is Section 74 of the *Law of Succession Act* and Rule 43 of the Probate and Administration Rules. ... What these provisions mean is that errors may be rectified by the Court where they relate to names or descriptions, or setting out of the time or place of the deceased's death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general.

....

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."
8. In this matter, the applicant challenges the acreage on the ground and the manner of its distribution. I agree with the Respondent's submissions that, once the grant was confirmed and the certificate of grant issued, this court is functus officio and that the issue of rectification is not applicable, as the orders sought are not concerned with the names and description of the parties. In my view, this court lacks the jurisdiction to grant the orders sought. It is the Environment and Land Court that has the mandate



to cancel titles and to deal with boundary issues. I therefore find that the application lacks merit and dismiss it. Each party to bear its own costs.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 29TH DAY OF APRIL 2026.

R E OUGO

JUDGE

In the presence of

Mr. Yeti for the applicant

Gerishon Wandabwa in person

Wilkister - C/A

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