

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

SUCCESSION CAUSE NO. E016 OF 2025

**IN THE MATTER OF THE ESTATE OF BERNARD LYAMBILA
NDURUCHI (DECEASED)**

**AGNES NAKHUMICHA LYAMBILA-----
PETITIONER**

-VERSUS-

**SAMUEL WAFULA LYAMBILA-----1ST
RESPONDENT**

**PATRICK WANYAMA LYAMBILA-----2ND
RESPONDENT**

-AND-

**GEOFFREY WANJALA LYAMBILA-----
APPLICANT**

RULING

1. By Notice of Motion dated 15th October 2025, the applicant, who states that he is a biological son of the deceased, has invoked the provisions of sections 47 and 76 of the Law of Succession Act, as well as Rules 49, 63 and 73 of the Probate and Administration Rules, seeking the following prayers:

(1) ... Spent;

- (2) ... Spent;
- (3) That this Honourable Court be pleased to order the rectification of the Certificate of Confirmation of Grant issued to the petitioner to reflect the correct acreage of the suit property as 29.25 acres, in accordance with the green card, in place of the erroneously stated 36 acres as contained in the Certificate of Confirmation of Grant dated 24th June 1999;
- (4) That this Honourable Court be pleased to appoint the applicant herein as a co-administrator of the estate of the deceased jointly with the petitioner, on the grounds that the petitioner, due to advanced age and ill health, has been unable to effectively and diligently administer the estate to its conclusion;
- (5) That this Honourable Court be pleased to cancel titles namely BUNGOMA/KAMAKOIWA/4224 and BUNGOMA/KAMAKOIWA/4225 and order that the land revert to the estate of the deceased, originally being land parcel number BUNGOMA/KAMAKOIWA/275 for fresh distribution;
- (6) That costs of this application be provided for.

2. The application is based on the grounds on the face of the application itself, as well as the supporting affidavit of the applicant, sworn on 15th October 2025. The gist of the Motion is that the petitioner was colluding with third parties with the intent to deprive and/or defraud the applicant and other beneficiaries of their share in the estate. In summarising the facts giving rise to the application, the applicant contends that the Certificate of Confirmation of Grant dated 24th June 1999 allocated 4 acres to each son and 1 acre to each daughter from land parcel no. BUNGOMA/KAMAKOIWA/275, which belongs to the deceased.
3. Despite the issuance of the said Grant, the petitioner has deliberately refused to facilitate the registration of titles in favour of the beneficiaries. Instead, the petitioner was accused of irregularly causing the subdivision and registration of the suit land in her own name and that of a third party, the Kenya Assembly of God Church, resulting in the issuance of title numbers BUNGOMA/KAMAKOIWA/4224 and BUNGOMA/KAMAKOIWA/4225. The petitioner also applied for a different acreage from that provided in the Certificate of Confirmation of Grant.
4. The applicant further avers that it is from that subdivision that the acreage on the ground failed to match the acreage on the title. The petitioner engaged a county surveyor clandestinely, without informing the other beneficiaries, and caused the land to be subdivided. In the process, the

petitioner allocated 3.4 acres to each son and awarded herself 3 acres in trust for herself and her daughters.

5. In the applicant's view, the petitioner's actions amounted to unlawful intermeddling. The applicant accused the petitioner of committing fraud, misrepresentation, and abuse of trust, warranting the court's intervention; hence the application. Further, the petitioner was accused of lodging several criminal complaints against them, which have all been dismissed. He prayed that the application be allowed.
6. In her replying affidavit, sworn on 31st October 2025, the petitioner deposed that the application was *res judicata* as some of the issues raised were resolved during the pendency of the suit in the lower court. Further, an application dated 17th June 2025 had raised similar issues and was pending a ruling scheduled for 17th December 2025.
7. The petitioner deposed that following the death of the deceased, her husband, the applicant, her son, was a minor. For that reason, the property was registered in her name in trust for him. She explained that the land parcel no. BUNGOMA/KAMUKUYWA/4225 was sold to the church before the applicant was born. When she sought to subdivide the remaining parcel, two of her sons, including the applicant, recklessly sold large portions of land to several purchasers who occupied those parcels and

constructed homes. Accordingly, the applicant filed suit in Bungoma ELC No. E008 of 2021, successfully evicting those persons. She stated that the purchasers, in cahoots with the applicant, were disrupting the eviction and impeding distribution.

8. The petitioner argued that the application was improperly before the court as the firm of advocates that filed the application were not properly on record. She expressed frustration that the applicant had a propensity to constantly refute her advice and collude with third parties. She maintained that she has all along faithfully administered the estate but the applicant was obstructing the administration process.

DETERMINATION

9. I have considered the application, the rival affidavits, and the law. The application is stated to be for the rectification of the grant. The jurisdiction of this court to consider an application of this nature is set out in section 74 of the Law of Succession Act, which provides as follows:

“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, may be rectified by the court, and the grant of representation, whether before or after confirmation, may be altered and amended accordingly.”

10. This provision is echoed in rule 43 of the Probate and Administration Rules, which provides as follows:

“Where the holder of grant seeks pursuant to 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 and places 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.”

11. The court in *In the matter of the Estate of Geoffrey Kinuthia Nyamweinga deceased* [2013] eKLR laid emphasis on this limited discretion in the following terms:

“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 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....”

12. Is the application merited? A perusal of the prayers sought reveals that the applicant seeks to correct the acreage of the suit property in accordance with the green card. He further seeks appointment as a co-administrator of the estate. Lastly, the applicant seeks an order cancelling the titles arising from a subdivision of the deceased's parcel of land.
13. In my view, the orders sought are drastic in nature and call for evidence that needs to be interrogated. This is not an application seeking to correct errors relating to names, descriptions, or the time and place of the deceased's death. The application fails to meet the parameters set out in the law. For this reason, I find the application has no merit and it is dismissed.

**Dated, signed and delivered virtually this 7th Day of May
2026.**

**R.E. OUGO
JUDGE**

In the presence of:

**Mr. Wamacho h/b Mr. H.P Wamalwa for the Applicant
Geoffrey Wanjala Lyambila
Wilkister - C/A**