



**In re Estate of the Late Kiprop Maina (Deceased) (Succession Cause 26 of 2004) [2025] KEHC 1052 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1052 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERICHO  
SUCCESSION CAUSE 26 OF 2004  
JK SERGON, J  
FEBRUARY 27, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE KIPROP MAINA (DECEASED)**

**BETWEEN**

**HENRY KIPNGETICH CHEPKWONY ..... PETITIONER**

**AND**

**CHARLES KIPNGENO ..... 1<sup>ST</sup> PETITIONER**

**ERICK KIPRUTO CHERUIYOT ..... 2<sup>ND</sup> PETITIONER**

**RULING**

1. The application coming up for determination is a notice of motion dated 19th September, 2024 seeking the following orders;
  - (i) Spent
  - (ii) That this honourable court be pleased to direct the Deputy Registrar to execute the transfer documents over and in respect to LR Kericho/Kiptere/2092 to facilitate the subdivision, transfer and registration of the resultant parcel to and/or in favour of the beneficiaries in terms of the rectified certificate of confirmation of grant issued herein on 29th February, 2024.
  - (iii) That this honourable court may be pleased to grant such further orders as may be just and/or expedient to enable the lawful heirs of the deceased herein, to benefit from the orders of this honourable court and the resultant certificate of grant issued on 29th February, 2024
  - (iv) That, the costs of this application be provided for.
2. The application is supported by grounds on the face of it and the supporting affidavit of Henry Kipngetich Chepkwony the 1st petitioner/applicant herein.



3. The applicant avers that the letters of administration intestate of the estate of the deceased were granted to Henry Kipngetch Chepkwony on 27th September, 2004, confirmed on 21st June, 2023 and rectified on 29th February, 2024 following which all the administrators were obliged to proceed and distribute the estate of the deceased in accordance to the rectified certificate of confirmation of grant issued on 29th February, 2024.
4. The applicant avers that he and the other beneficiaries of the deceased signed the requisite completion documents in accordance to the rectified grant, however, the 2nd and 3rd petitioners/respondents neglected and/or reneged to sign the completion documents and as a result the rest of the beneficiaries were unable to implement and/or execute distribution of the estate thereby delaying completion of the succession process.
5. The applicant avers that without the Deputy Registrar signing completion documents, the succession process cannot be completed thereby denying the beneficiaries of the estate of the deceased the fruits of the protracted succession process.
6. The 2nd petitioner herein Charles Kipngeno filed a notice of preliminary objection dated 5th November, 2024 in response to the instant application based on the the following grounds;
  - (i) That vide ruling delivered by this Honourable Court on 31st July, 2024, the rectified certificate of confirmation of grant issued on 29th February, 2024 was struck out.
  - (ii) That the notice of motion dated 19th September, 2024 is without merit and/or legal basis and otherwise an abuse of court process.
  - (iii) That contrary to the notice of motion dated 19th September, 2024 the distribution of the estate property herein KERICHO/KIPTERE/2092 is in terms of the certificate of confirmation of grant issued on 21st June, 2023 and not the rectified certificate of confirmation of grant issued on 29th February, 2024.
  - (iv) That it shall be in the interest of justice that the chamber summons dated 28th February, 2024 pending hearing and determination be allowed as prayed.
7. Henry Kipngetch Chepkwony the applicant herein filed replying affidavit in respect to the notice of preliminary objection and the application dated 28th February, 2024 and reiterated that he filed the application dated 19th September, 2024 seeking that the Deputy Registrar do execute transfer documents in respect to the rectified certificate of grant dated 29th February, 2024. He contended that the application dated 28th February, 2024 has since been overtaken by events as it seeks to implement the grant dated 21st June, 2023 which has since been rectified by this court on 29th February, 2024.
8. He avers that the preliminary objection seeks to object to the rectified grant dated 29th February, 2024 which captures all beneficiaries of the estate and their respective shares of the estate.
9. He avers that the preliminary objection does not raise any point of law as the estate of the deceased was distributed equitably amongst the beneficiaries as per the grant dated 29th February, 2024.
10. He avers that as per the ruling of the court dated 31st July, 2024, the rectified grant dated 29th February, 2024 was not nullified and therefore the said grant is valid, the court merely dismissed the application dated 8th March, 2024 as it was filed by Stephen Cheruiyot a grandson of the deceased deeming him a stranger to the instant succession proceedings.
11. He avers that the land parcel Kericho/Kiptere/2092 measuring 9.57 HA was distributed equitably amongst the beneficiaries.



12. He avers that on 29th February, 2024 this court rectified the grant dated 21st June, 2023 and that the said grant has not been challenged by review and/or appeal.
13. He avers that whereas the respondents were opposing the rectified grant, they did not respond to the application for rectification, yet they were served with the application for rectification of grant and a hearing notice, they therefore could not feign ignorance and/or fault the court for orders issued on 29th February, 2024.
14. He reiterates that the notice of preliminary objection does not raise any point of law as the rectified grant dated 29th February, 2024 that he seeks to implement was duly and lawfully issued by this court.
15. Having considered pleadings and oral submissions by the parties, the sole issue for determination by this court is whether to order the Deputy Registrar to execute the transfer documents over and in respect to LR Kericho/Kiptere/2092 to facilitate the subdivision, transfer and registration of the resultant parcel to and/or in favour of the beneficiaries in terms of the rectified certificate of confirmation of grant issued herein on 29th February, 2024.
16. On one part, the applicant contended that the letters of administration intestate of the estate of the deceased were granted to all the petitioners on 27th September, 2004, confirmed on 21st June, 2023 and rectified on 29th February, 2024, however, the 2nd and 3rd petitioners/respondents neglected and/or reneged to sign the completion documents and as a result the rest of the beneficiaries were unable to implement and/or execute distribution of the estate thereby delaying completion of the succession process. On the other hand, the 2nd and 3rd petitioners maintained that the distribution of the estate property herein Kericho/Kiptere/2092 is in terms of the certificate of confirmation of grant issued on 21st June, 2023 and not the rectified certificate of confirmation of grant issued on 29th February, 2024.
17. It is discernible from the court record, that on 29th February, 2024, this court issued orders for rectification of grant ex parte pursuant to an application dated 15th September, 2023, upon noting that there was response to the summons for rectification of grant and no attendance on the part of the 2nd and 3rd petitioners for the inter partes hearing scheduled for 29th February, 2024. It is therefore imperative that the rectified certificate of confirmation of grant issued on 29th February, 2024 by this court be implemented and/or executed to pave the way for distribution of the estate and completion of the succession process.
18. In the end, the notice of motion dated 19th September, 2024 is found to be meritorious. This dispute involves family members. A fair order on costs is that each party should bear his or her own costs.

**DELIVERED, SIGNED AND DATED AT KERICHO THIS 27TH DAY OF FEBRUARY, 2025.**

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**J.K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

Okok for the Petitioner

No Appearance for the Objector

