



**In re Estate of Luisa Kaswii Kithongo (Deceased) (Succession Cause E934 of 2011) [2025] KEHC 4035 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4035 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
SUCCESSION CAUSE E934 OF 2011**

**RC RUTTO, J**

**MARCH 26, 2025**

**IN THE MATTER OF THE ESTATE OF LUISA KASWII KITHONGO (DECEASED)**

**IN THE MATTER OF**

**WILBER MBALUKA KITHONGO ..... APPLICANT**

**RULING**

1. On 4<sup>th</sup> April 2014, this Court issued a certificate of confirmation of grant to the estate of the Late Lusua Kaswii Kithongo (Deceased) as per the schedule of distribution of properties attached. As per the schedule, the deceased's properties were to be divided equally among five people.
2. Thereafter, the administrator of the estate namely Wilber Mbaluka Kithongo moved court by way of chamber summons dated 23<sup>rd</sup> October 2024 seeking that the certificate of confirmation dated 4<sup>th</sup> April 2014 be rectified in the following terms;

Kangundo/Matetani/1683	Half ½ share be registered in the name of Wilber Mbaluka Kithongo Quarter (1/4) share to be registered in the name of Lawrence Kilee Kithongo Quarter (1/4) share to be registered in the name of Esther Mwikali Nithiwa
Kangundo/ Isinga/1142	Two fifths 2/5 to be registered in the name of Beth Nthenya Nzioki Three fifths 3/5 to be registered in the name of Wilber Mbaluka Kithongo
Kangundo/ Matetani/1246	To be registered in the name of Daniel Munyao Kithongo as a whole



3. The application was supported by the affidavit of the administrator and a beneficiary of the estate sworn on 23<sup>rd</sup> October 2024 as well as the consent to the rectification of grant executed by 4 out of the six beneficiaries.
4. On the first time this application came up for hearing the court was informed that some of the beneficiaries were present in court while three were absent. Despite service as evident by the affidavit of sworn by Francis Wambua Mutiso, a court licenced process server, the three beneficiaries did not attend the hearing of the application for rectification. The matter proceeded for hearing whereupon the court was informed that the rectification was aimed at aligning the sharing of the deceased estate with the actual occupation/entitlement on the ground. Further, that some of the beneficiaries were getting shares in other assets belonging to the family and not part of the estate.
5. The beneficiaries present namely Daniel Munyao Kithogo; Beth Nthenya; Wilber Mbaluka Kithongo testified and all told court that they were fully aware of the proposed rectification and were not opposed to the same. The matter was then adjourned for further hearing to enable the other beneficiaries attend court.
6. On the date scheduled for further hearing, one of the beneficiaries, Nancy Nduku Ndunda, appeared virtually and informed court that she was aware of the proposed distribution and she had no objection to the application being allowed.
7. Section 74 of the *Law of Succession Act* allows the Court to rectify the grant both before and after confirmation. The application is brought by the administrator and it has not been shown to the Court that the application is not merited. On this basis, the application is allowed as prayed. The certificate of confirmation of grant dated 4<sup>th</sup> April 2014 is accordingly rectified as set out in the application. No order as to costs.
8. Orders accordingly.

**DELIVERED, DATED AND SIGNED THIS 26<sup>TH</sup> MARCH, 2025.**

**RHODA RUTTO**

**JUDGE**

In the presence of;

.....for Appellant

.....Court Assistant

