



**In re Estate of Margaret Indakuli Shitsama - Deceased (Succession Cause 657 of 2005) [2025] KEHC 5592 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5592 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 657 OF 2005  
SC CHIRCHIR, J  
APRIL 29, 2025**

**IN THE MATTER OF THE ESTATE OF MARGARET INDAKULI SHITSAMA (DECEASED)**

**BETWEEN**

**SYLVIA VIGENI SHITSAMA ..... PETITIONER**

**AND**

**ISAAC MBIMWA LUSALA ..... APPLICANT**

**RULING**

1. Isaac Mbimwa Lusala (The Applicant) has filed the summons dated 4/9/2024 seeking for rectification of the certificate of Confirmation of Grant. In the grounds in support he stated that he was a beneficiary of the Estate of Margaret Indakuli Shitsama (Deceased) as a purchaser; that at the time, the purchased property was to be transferred to one Kenneth Mwanje Lusala so that the said Kenneth can acquire the lease documents for the property.

**Determination**

2. The Applicant has prayed for rectification of Grant. The *Law of Succession Act*, at Section 74 provides that the court may correct errors on a grant whether or not confirmed. The Section 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 granted may be rectified by the court and the grant of representation whether before or after confirmation may be altered and amended accordingly”.
3. It is evident from the prayer in the Application that the Applicant wants to substitute a beneficiary. He wants to appoint someone to take his place as a beneficiary. That is not rectification. Rectification is about correcting errors. Substitution is not correcting errors.



4. Further the Applicant states that the property was to go to Kenneth, he did not explain why the property ought to have gone to said third party , and not him. In other words, he has not explained why he needs the substitution.
5. Finally, the Applicant is not an Administrator of the Estate. It is the work of an Administrator to seek rectification or substitution or redistribution of the estate. Why was the court not notified at the time that the plot was supposed to go to Kenneth and not the Applicant, and who was the Kenneth in relation to the Applicant. Whatever the applicant wants to do with the plot that was given to him 12 years ago, he cannot use this court to achieve that purpose.
6. This is an attempt to use the family court to achieve certain ends, which have no relation to a family court. The Applicant is notably represented , and hence there is no justification for this apparent mischief. I consider the Application as an abuse of the court process .It is hereby struck off

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ISIOLO THIS 29TH DAY OF APRIL, 2025.**

**S. CHIRCHIR**

**JUDGE.**

In the presence of :

Godwin Luyundi- Court Assistant

Mr. Biketi for Mr. Shitsama for the Respondent.

