

WHEN A CERTIFICATE OF
CONFIRMATION OF GRANT IS
REVIEWED AND NOT RECTIFIED



The Law of Succession Act, Cap 160 Laws of Kenya (the Act) and its subsidiary Legislation The Probate and Administration Rules, 1980 (the Rules) make rather fool proof provisions in regard to administration of deceased person's estate whether testate or intestate. The guidelines are clear from the Petitioning for a Grant of Letters of Administration Intestate (where one died without a will or a valid will) or Grant of Probate (where one died having left a valid will) and/or Grant of Proof of Oral Will to the issuance of the resultant Grant thereof and consequently the Certificate of Confirmation of the Grant (The end product of the succession process). The steps to be followed by the Personal Representatives (Administrators) or Executors are laid down in exquisite fashion.

Suppose after successful Succession proceedings an Administrator of an Estate or an Executor of a Will receives a certified copy of Grant and the Certificate of Confirmation, however, as they are administering the Estate they realise that there are properties and/or Assets that were inadvertently left out and not included in the said Confirmation of Grant. How would they or their Advocates on record proceed?

Section 74 of the Act as read with Rule 43 of the Rules provide for rectification of errors but are silent about our scenario above. Such that, if a property description has a typographical error, you may apply for rectification but what would you apply for for inclusion of left out properties?

"Section 74. Errors may be rectified by court

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."

(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.

(2)Unless at the time of issue of the summons the registrar otherwise directs there shall be filed with the summons an affidavit in Form 13 by the applicant containing such information as is necessary to enable the court to deal with the matter.

(3)The summons, together with the affidavit (if any), shall without delay be laid by the registrar before the court which may either grant the application without the attendance of any person or direct that it be set down for hearing on notice to the applicant and to such other persons (if any) as the court shall think fit."

The above quoted provisions in regard to Rectification have been successfully applied in our Jurisdiction for the umpteenth time. Be that as it may, the Act does not necessarily provide expressly for the Review of Grant particularly after confirmation.

Another supposition to help us better appreciate the aspect of review and not rectification is where a Party wishes to have the assets of the estate redistributed or there is discovery of new assets that were not available or had not been discovered at the time of distribution?

Most Practitioners and/or Parties acting in person may quickly opt for the above provisions of Rectification or or alteration or amendment of the Certificate of Confirmation of Grant. However, this option would be imprudent since such changes are fundamental, not superficial. They go to the core of the distribution. They cannot be effected without touching the Orders made by the Court at the distribution of the estate during the proceedings for the Hearing of the Summons for Confirmation of Grant. Consequently, such changes cannot and should not be effected through a mere AMENDMENT or RECTIFICATION of the Certificate of Confirmation of Grant.

The right approach ought to be an application for review of the orders made at the Confirmation of the grant as rightly put by the Law of Succession Guru Musyoka J In re estate of Charles KibeKaranja (deceased) [2015] eKLR where Musyoka J. stated the following on Section 74 of the Law of Succession Act and discovery of new assets:

"...The remedy of review of Court orders is not directly provided for in the Law of Succession Act and the Probate and Administration Rules, but it is imported into probate practice by Rule 63 of Probate and Administration Rules, which has adopted a number of procedures from the Civil Procedure Rules.

Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiary on the basis that the said assets or heirs were left out by mistake or error.

Where assets are discovered after the Court has confirmed the grant or a heir or survivor of the deceased who had previously been unheard of materializes after distribution, the Court may review its orders made at the point of confirming the grant on the ground of discovery of new and important evidence that was not available at the time the grant was being confirmed..."

The Honourable Judge proceeded to state that ***"New assets cannot be introduced and distributed by merely rectifying the certificate of confirmation of grant. That calls for going back to the distribution orders, so as to have them altered or revised. The applicant ought to have sought a review of the orders of 7th November, 2006 so as to include the discovered assets and to distribute them. It is only after review or revision of the said orders that an altered certificate of confirmation of grant can issue."***

Therefore, in such circumstances, the Family Court will be called to invoke the provisions of Rule 63 of the Rules which has adopted the Civil Procedure Rules on a number of procedures like the Review discussed herein. That is where ***Order 45 of the Civil Procedure Rules*** which provides for Review and it states as follows:

"(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

Parties should therefore be very cautious on how they approach the Court for rectification or alteration and/or amendment of Grant. The abundance of caution should be even higher when the grant has already been confirmed and a Certificate of Confirmation of grant issued.

Clearly, whereas you may proceed strictly under the Law of Succession Act and Rules to apply for Rectification of grant, you will have to apply for Review under the Civil Procedure Rules once the certificate of confirmation is issued.



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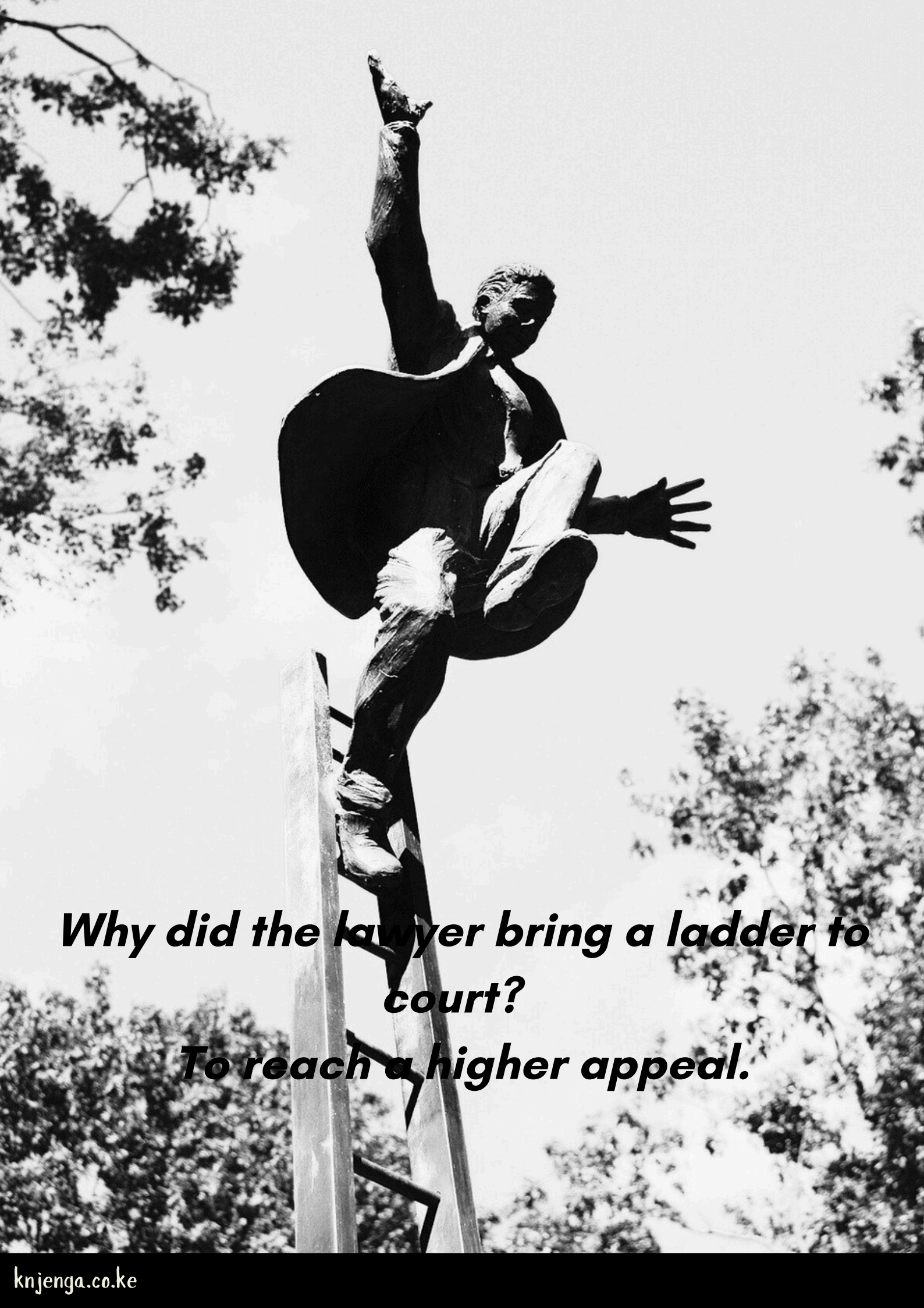
Peris representing us at the Hong Kong Trade Development Council Forum

Robinson & Esther attending a meeting hosted by the Rotary Club of Kabete.



Peris and Dr. Patricia at the Women on Boards Network Breakfast held on Valentine's Day.





***Why did the lawyer bring a ladder to
court?***

To reach a higher appeal.