



REPUBLIC OF KENYA



**In re Estate of Salatiel Mukunza (Deceased) (Succession Cause  
272 of 2006) [2024] KEHC 16684 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16684 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
SUCCESSION CAUSE 272 OF 2006  
AC MRIMA, J  
DECEMBER 19, 2024  
IN THE MATTER OF THE ESTATE OF SALATIEL MUKUNZA (DECEASED)**

**BETWEEN**

**HUDSON BUSAGE MUKUNZA ..... APPLICANT**

**AND**

**STANLEY CHAVANGI MUKUNZA ..... PETITIONER**

**AND**

**SELINA CHAVANGI & 5 OTHERS & 5 OTHERS ..... BENEFICIARY**

**RULING**

1. The Summons subject of this Ruling is dated 20<sup>th</sup> September 2023. It was lodged by Hudson Busage Mukunza, one of the beneficiaries of the estate herein (hereinafter referred to as ‘the Applicant’). The Summons seemed to have been brought against the Petitioner and on behalf of the rest of the parties who were described as beneficiaries. All the parties are siblings.
2. The Summons is supported by the Affidavit deposed by one Japheth N. Mukunza to on 19<sup>th</sup> September 2023 and sought the following reliefs: -
  1. Spent
  2. The substituted Grant of Letters of Administration dated 26/11/2012 and the subsequent Certificate of Confirmation made and issued on the 29<sup>th</sup> day of unknown month, 2014 and the proceedings of 22/05/2014 be reviewed, varied, set aside and or nullified.
  3. The Court do Order that the certificate of Confirmation issued on 29<sup>th</sup> November 2007 be reinstated in terms of the subdivision of original parcel number Bungoma/Ndalu/91.



4. Any other direction the Court shall give so as to give effect to the consent and Agreement by beneficiaries to the Estate of the Deceased.
5. Costs be paid to the Petitioner/Respondent.
4. In the grounds of in support of the Summons, the Applicant asserted that this Court confirmed the grant in the presence of the beneficiaries upon agreeing on the mode of distribution with finality in the presence of the Area Chief, a Surveyor and some elders. That, during the meeting, the Petitioner herein, Stanley Chavangi Mukunza, now the Respondent, was present and signed the agreed mode of distribution where the deceased's land known as Bungoma/Ndalu/91 was to be equally sub-divided into two such that each of the two wives of the deceased [houses] got 16 ½ acres.
5. The Applicant challenged the confirmation proceedings carried out on 22<sup>nd</sup> May 2014 and the subsequent Grant that was issued as irregular and without service to all the beneficiaries. The Applicant pleaded that the cancellation of title was done without service to all the parties who included innocent purchasers. To the Applicant, there was a grave error on record since the Petitioner failed to disclose all material facts to enable the Court adopt the agreed family position. It was on the said background that the Applicant and the rest of the Respondents/beneficiaries urged the Court to set aside the impugned orders.
6. In the supporting Affidavit, it was deposed that the first time Japheth N. Mukunza became aware that a Grant had been issued to the Petitioner/Respondent was on 12<sup>th</sup> July 2022 when he and one Nelson were served with Court documents and in compliance thereto, attended Court. However, on reaching Court, they learnt that the matter had already been dealt with. It was their further case that they latter visited the Lands Office at Bungoma where they learnt that their father's land which was subject of distribution had been restricted.
7. It was the Applicant's further case they sought the services of their Advocate who subsequently advised them that the Court had cancelled the initial Grant and issued another Grant on the basis of a letter from the Area Chief dated 11<sup>th</sup> February 2014 where the Chief purported that he had summoned all the beneficiaries to append their signatures. The beneficiaries, being siblings, denied ever being summoned by the Area Chief or receiving any communication from the said Chief and neither was there any communication of the Court case to any of them. It was alluded that none of the beneficiaries was made aware of the subsequent Court proceedings that annulled an earlier Grant since they would have readily attended Court.
8. It, therefore, was the case that the substitution of the Administrators and the confirmation was done without service upon the beneficiaries and that none of them ever agreed on the distribution.
9. It was also deposed that most of the beneficiaries had already disposed their shares of the estate to third parties and at the time of cancelling the initial Grant and issuing another Grant and Certificate, the Court was not aware that much of the water was under the bridge. According to the Applicant, there was a grave error apparent on the face of the record since the impugned proceedings were legally faulty.
10. He stated that the grant made in 2007 was never nullified and thus the Court made a grave error in confirming a subsequent grant.
11. It was his case that the error apparent on record needed to be rectified. He urged the Court to review the Order of 22<sup>nd</sup> May 2014 and all the subsequent orders and to restore the initial grant.



## Analysis:

12. As the application seeks to review some orders in place, a look at the law on review follows. Review entails a Court making a departure from its earlier finding on an issue. A Court may do so on its own motion or upon application by a party. Review is discretionary. In exercising such discretion, the Court must abide by the principles established for the exercise of such powers either by the law or settled judicial precedents.
13. The power of review in the High Court is anchored in the [Civil Procedure Act](#), Cap. 21 of the Laws of Kenya and the Civil Procedure Rules, 2010.
14. Section 80 of the [Civil Procedure Act](#) provides as follows: -

Any person who considers himself aggrieved—

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

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
15. Order 45 Rule 1 of the [Civil Procedure Rules](#), 2010 further provides for review in the following manner: -

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.
16. Courts have severally dealt with the issue of review. The Supreme Court in Application No. 8 of 2017, [Parliamentary Service Commission -vs- Martin Nyaga Wambora & others](#) [2018] eKLR, quoted with approval the findings of the *East Africa Court of Appeal in Mbogo and Another -vs- Shah* [1968] EA, upon establishing the following principles: -
  - (31) Consequently, drawing from the case law above, particularly Mbogo and Another v Shah, we lay down the following as guiding principles for application(s) for review of a decision of the Court made in exercise of discretion as follows:
    - i. A review of exercise of discretion is not as a matter of course to be undertaken in all decisions taken by a limited bench of this Court.
    - ii. Review of exercise of discretion is not a right; but an equitable remedy which calls for a basis to be laid by the applicant to the satisfaction of the Court;



- iii. An application for review of exercise of discretion is not an appeal or a chance for the applicant to re-argue his/her application.
- iv. In an application for review of exercise of discretion, the applicant has to demonstrate, to the satisfaction of the Court, how the Court erred in the exercise of its discretion or exercised it whimsically.
- v. During such review application, in focus is the decision of the Court and not the merit of the substantive motion subject of the decision under review.
- vi. The applicant has to satisfactorily demonstrate that the judge(s) misdirected themselves in exercise discretion and:
  - a. as a result, a wrong decision was arrived at; or
  - b. it is manifest from the decision as a whole that the judge has been clearly wrong and as a result, there has been an apparent injustice.

17. The Court of Appeal in Civil Appeal No. 2111 of 1996, *National Bank of Kenya vs. Ndungu Njau* observed as follows in respect of reviews applications: -

A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the matter nor can it be a ground for review that the court proceeds on an incorrect expansion of the law.

18. The import of Section 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules was considered by the High Court in Miscellaneous Application 317 of 2018, *Republic -vs- Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR. Upon considering comparative jurisprudence, the Court crystallized the principles for consideration in reviewing its own decisions as follows:

- i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
- ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
- iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
- iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
- vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.



- vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
  - viii. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
  - ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
  - x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.
19. Returning to the case at hand, having carefully considered the prayers sought in the Summons and the ruling rendered on 16<sup>th</sup> May 2019 by Hon. Chemitei, J., the Summons seems to be a non-starter. I say so because the issues raised were all dealt with by the Court. For instance, the issue of the confirmation proceedings held on 22<sup>nd</sup> May 2014 was duly addressed in the said ruling at paragraph 11 as follows: -
11. In a very interesting turn of events the Applicant again with the consent of the rest of the beneficiaries applied for the confirmation of the grant again which was allowed by this Court on 29<sup>th</sup> May 2014 [instead of 22<sup>nd</sup> May 2014] .....
20. The Applicant in that ruling was the Petitioner herein and the Respondents were the instant beneficiaries. The Court was satisfied that the now impugned confirmation proceedings resulted from the consent of all the current parties. That was in 2019, a period of over 5 years ago.
21. There is also the issue of the subsequent prayer sought by the Applicant in the event the review is allowed. The Applicant sought the following further order: -
3. That the Court do Order that the certificate of Confirmation issued on 29<sup>th</sup> November 2007 be reinstated in terms of the subdivision of original parcel number Bungoma/Ndalu/91.
22. In the said ruling, the Court also dealt with the above in the following terms: -
19. What then is the way forward? .....in the premises this Court shall set aside the grant issued and confirmed on the 29<sup>th</sup> November, 2007 for the simple reason that it did not include the share due to the Applicant.
  20. The grant issued on 26<sup>th</sup> July 2012 and confirmed on 29<sup>th</sup> November 2014 is hereby sustained as it takes into account the interest of the Applicant.
23. The Court then went further and granted the following further orders: -
21. Consequently let parcel number BUNGOMA/NDALU/91 revert to its original status quo and that any other titles which emanated from the earlier subdivisions be and are hereby cancelled and they should be surrendered to the relevant land registry.



22. The parties as per the said grant be at liberty to carry out the appropriate survey work taking into consideration the historical position on the ground especially the fixed developments by the beneficiaries.
23. Each of the parties to bear the costs of the survey fees on a prorated basis.
24. The beneficiaries were duly represented in this matter. The issues raised in the current Summons were dealt with and a ruling rendered way back in 2019. That is around 5 years ago. Efforts to enforce the above orders have been underway including filing of applications thereto. As the processes were ongoing, the beneficiaries seemed to have come out of slumber and filed the instant Summons; 5 years later. Granting the orders sought in the Summons will have the effect of disinheriting the Petitioner; a position which this Court has already ruled against.
25. The Applicant and the rest of the beneficiaries appear to be so determined to ensure that Stanley Chavangi Mukunza, the Petitioner herein, does not get a share of the deceased's estate. That may be as a result of the reason dealt with in the ruling of 16<sup>th</sup> May 2019 where it is believed that the Petitioner had already been gifted another parcel of land by the deceased. The issue was, however, dealt with a finding made by the Court. The finding remains unchallenged.
26. To this Court, the ruling of 16<sup>th</sup> May 2019 settled the issue of the distribution of the estate herein so fairly. It is on that basis that this Court finds no need to interfere with the said findings and allows the distribution to proceed as decreed by the Court. Furthermore, some beneficiaries have already disposed of their shares and any contrary orders will have a ripple negative impact. That may be unnecessary in the unique circumstances of this matter.
27. The review application. Therefore, fails, not only on account of the inordinate time taken to move the Court on review, but also that the application is aimed at unnecessarily delaying the finalization of this Cause which was instituted over 18 years ago. Further, the issues raised were all dealt with in the ruling delivered on 16<sup>th</sup> May 2019 and no appeal was preferred to date. The Summons, hence, fails to prove any of the settled grounds for review in law and suffers a false start.

**Disposition:**

28. As I come to the end of this ruling, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and subsequently elected into the Judicial Service Commission thereby mostly being away from the station. Apologies galore.
29. Deriving from the above, the following final orders do hereby issue: -
  - a. The Summons dated 20<sup>th</sup> September 2023 is hereby dismissed.
  - b. The Applicant shall bear the costs of the application.
  - c. Leave to appeal, if need be, is hereby granted.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT KITALE THIS 19<sup>TH</sup> DAY OF DECEMBER, 2024.**

**A. C. MRIMA**

**JUDGE**



Ruling virtually delivered in the presence of:

Mr. Wanyonyi, Learned Counsel for the Applicant.

No appearance for Miss. Elizabeth Chunge, Learned Counsel for the Petitioner.

Chemosop/Duke – Court Assistants.

