



**In re Estate of Daudi Mbogori (Deceased) (Succession Cause  
206 of 1994) [2023] KEHC 26972 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26972 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
SUCCESSION CAUSE 206 OF 1994  
G MUTAI, J  
NOVEMBER 30, 2023  
IN THE MATTER OF THE ESTATE OF DAUDI MBOGORI (DECEASED)**

**BETWEEN**

**LEMMY K MBOGORI ..... 1<sup>ST</sup> PETITIONER  
PETER MBOGORI M'MBUI ..... 2<sup>ND</sup> PETITIONER  
JULIUS KIBANGA MBOGORI ..... 3<sup>RD</sup> PETITIONER**

**AND**

**DORINE CERIA MAKENA MUTHINJA ..... 1<sup>ST</sup> OBJECTOR  
TEDDY MWITI MUTHINJA ..... 2<sup>ND</sup> OBJECTOR  
ABIBA TIRINDI MUTHINJA ..... 3<sup>RD</sup> OBJECTOR**

**RULING**

1. This Court delivered a ruling on October 23, 2023. Vide the said ruling, the Court inter alia :-
  - a. Revoked the grant of letter of administration intestate issued to the Petitioners/Respondents, which grant was confirmed on 8<sup>th</sup> June 1994;
  - b. Revoked all dispositions of the assets of the estate of Daudi Mbogori (deceased); and
  - c. Ordered the 1<sup>st</sup> Objector/Applicant in conjunction with the Petitioners/Respondents to apply for a fresh grant of letter of administration intestate of the estate of Daudi Mbogori (deceased) within 60 days of 23<sup>rd</sup> day of October 2023.
2. The 1<sup>st</sup> Objector/Applicant, in her affidavit supporting the application, deposed that the Court did not list the properties whose disposition was revoked, making it “very difficult for the registrar to



implement a general order over the estate.” The deponent of the said application attached a copy of the previous application, the ruling of the Court, and the order that was extracted.

3. The application is expressed to be brought under section 47 of the [Law of Succession Act](#), rules 44, 59, and 73 of the [Probate & Administration Rules](#), and articles 159(2), 45, and 53 of [the Constitution](#) of Kenya, 2010.
4. The application was opposed. The 1<sup>st</sup> Petitioner/Respondent, Lemmy Mbogori, swore an affidavit on 15<sup>th</sup> November 2023, stating that the application before the Court was misconceived, frivolous, and lacked merit. He stated that the Court allowed the prayers sought by the Objector/Applicants and ordered them to petition for a Grant, something they hadn’t done. In his view, if there were any issues the applicants wanted to agitate, they could be raised in the intended petition for Grant of Letters of Administration Intestate. The 1<sup>st</sup> Petitioner/Respondent averred that the application did not meet the threshold set out under section 80 of the [Civil Procedure Act](#) and order 45 of the [Civil Procedure Rules](#), 2010, and should hence be dismissed with costs.
5. The application was argued on 20<sup>th</sup> November, 2023. The submissions made by the parties broadly mirror what was set out in the application, supporting affidavit and the Replying Affidavit. I see no need to rehash the same here.
6. The question before me is whether a case for review of my previous ruling has been made. I must consider the applicable law and the superior Courts’ decisions on similar matters to determine this question.
7. Section 80 of the [Civil Procedure Act](#) provides that:-
  - “ 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.”
8. Order 45 rule 1 states that:-
  - “(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.”



9. From the foregoing, it is clear that a ruling or judgment of the Court may be reviewed on an application of an aggrieved party:-
- a. On discovery of new and important matter or evidence which, after the exercise or due diligence, was not within the knowledge or could not be produced by the Applicant at the time the decree was passed or order made; or
  - b. Or an account of some mistake or error apparent on the face of the record; or
  - c. For any other sufficient reason; and
  - d. The application for review is made without undue delay.
10. The Objectors/Applicants aver that the failure by this Court to list the title numbers of the parcels of land the subject of this Court's previous orders is an error apparent on the face of the record which ought to be corrected by the Court.
11. Courts have defined what amounts to an error on the face of the record. In *Omote & Another versus Ogutu*[2022]KEHC 16441(KLR) the Court (per F. Gikonyo) held that:-
- “an error or mistake apparent on the face of the record is one that is self-evident and does not require elaborate arguments to be established”
12. In my view, the Courts, when making orders, intend that the orders be effectual and capable of implementation. Clearly, an order, such as the one that this Court made in this matter, is ineffectual in so far as the relevant Land Registrar may not be able to act on it for want of specificity. That failure by this Court to list the affected plots is thus an error which is clear and does not need elaboration.
13. Even if I were wrong in finding that there is an error apparent on the face of the record, it would appear to me that the Objectors/Applicants review application is merited on the ground that the failure by this Court to list the affected parcels of land is a sufficient reason warranting review.
14. What amounts to “any other sufficient reason” was discussed by the Court in *Shanzu Investments Ltd versus Commissioner of Lands*; Civil Appeal No 100 of 1993 where the Court stated: -
- “Any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a clog on the unfettered right given to the Court by section 80 of the *Civil Procedure Act*; and that the other grounds set out in the rule did not in themselves form a genus or class of things which the third general head could be said to be analogous.”
15. It is, therefore, my finding that the application has merit. The same is hereby allowed with no orders as to costs. Consequently, I allow prayers 4, 5 and 6 of the Summons for Revocation of Grant dated July 19, 2023 as drafted.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT MOMBASA ON THE 30<sup>TH</sup> DAY OF NOVEMBER 2023  
VIA MICROSOFT TEAMS.**

**GREGORY MUTAI**

**JUDGE**

In the presence of: -



Mr. Thangicia, for the Objectors/Applicants;  
No appearance for the Petitioners/Respondents; and  
Mr. Arthur Ranyondo – Court Assistant

