



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Daniel Kairu Kimani (Deceased) (Succession Cause E26 of 2020) [2025] KEHC 2905 (KLR) (12 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2905 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE E26 OF 2020**

**JM NANG'EA, J**

**MARCH 12, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE DANIEL KAIRU KIMANI (DECEASED)**

**BETWEEN**

**MONICA WANJIKU KAIRU ..... 1<sup>ST</sup> ADMINISTRATOR**

**BENSON NJOROGE KAIRU ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**TIMOTHY MWANGI KAIRU ..... 1<sup>ST</sup> OBJECTOR**

**FAITH WACUKA KAIRU ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. The Administrators bring two Notices of Motion dated 20<sup>th</sup> December 2024 and 5<sup>th</sup> February 2025. In the application dated 20<sup>th</sup> December 2024 the Administrators pray for reliefs as hereunder;
  1. Review of ruling delivered on 5<sup>th</sup> November 2025 to rectify clerical errors or accidental slips apparent therein.
  2. That the ruling is corrected at paragraph (iii) to show the proper date from the 1<sup>st</sup> Protestor is to account for the rent collected to read September 2020 instead of December 2023.
2. The Summons is supported by Grounds on the body thereof and affidavit sworn by the Administrators jointly.
3. The Protestors oppose the application vide an affidavit in reply purportedly sworn before George Gilbert Advocate.
4. It is averred in the Administrators' affidavit that the court erroneously stated the date from which 1<sup>st</sup> Protestor (Timothy Mwangi Kairu) was to account for rent collected from the deceased's estate's property known as Nakuru Langa Langa/130 as December 2023 instead of September 2020 being the



- time tenants were instructed to start depositing rent into a different bank account. The communication to the tenants was said to have been made vide letter dated 1<sup>st</sup> September 2020. The court is told that it was correctly stated in the ruling in question that the 1<sup>st</sup> Protestor started collecting rent on the stated property from September 2020 which was the Administrators' position.
5. The Administrators aver that correction of the error is necessary to enable them proceed to transmit the estate to its rightful beneficiaries and that no prejudice would be occasioned to the Protestors if the court's ruling in issue is reviewed as desired.
  6. The Protestors' purported affidavit seems defective as it does not show by whom it is sworn and has no jurat indicating the date it was ostensibly sworn and witnessed by the Commissioner for Oaths.
  7. The Administrators' advocates also point out the error in the Protestors' purported affidavit evidence. Citing Order 19 Rules (4), (5) & (6) of the Civil Procedure Rules 2010 among other legal provisions, Counsel point out that every affidavit should state the description, true place and postal address of the deponent and that an affidavit must be drawn in the first person. The court is therefore told that there is no affidavit known in law that has been filed in opposition to the application. I am urged to treat the application unopposed in the circumstances. In any event, the Administrators argue that the court's error in the dates as alluded to in their affidavit evidence is a clerical error curable by a review order.
  8. The Protestors' Advocates appear to concede the errors in the Replying Affidavit in opposition to the Administrators' application but pitch tent inter alia on Article 159 (2) (d) of the Constitution which decrees that justice shall be administered without undue regard to procedural technicalities. It is explained that the deficiencies in the Replying Affidavit arise from a printing error that omitted the missing parts. Further reliance is placed on the Court of Appeal case of Philip Chemwolo & Another v Augustine Kubede [1982 – 88] in which it was observed that a litigant should not be punished owing to a mistake of Counsel.
  9. Counsel for the Protestors further opine that any such errors in the decision in question as pointed out by the Administrators' Counsel ought to be rectified by my brother Hon. Justice H. M. Nyaga who authored and delivered the ruling.
  10. Having perused the parties' arguments and the record as relevant, the following points arise for determination;-
    - a. Whether the Protestors swore and put in a proper affidavit in opposition to the application.
    - b. Whether a case has been made out for review of the court's ruling of 5<sup>th</sup> November 2024 by the Court as prayed.
    - c. The orders commending themselves to the court on the application.
  11. Whereas the Administrators point out defects in the Protestors' filed reply which they contend to be fatal to the application rendering it to be deemed as unopposed, the Protestors retort that the errors are excusable.
  12. It is not difficult for the court to agree with the Administrators' contentions. The purported replying affidavit is indeed defective for offending express provisions of the law including Order 19 Rules (4), (5) and (6) of the Civil Procedure Rules 2010 as submitted by the Applicants' advocates. It is not even shown who was swearing the affidavit. The errors in the affidavit go beyond just form and thus inexcusable. It was upto the Protestors to ensure that what was filed is an affidavit that meets the requirements of the law.



13. The court accordingly concurs with the Applicants that there is no proper or lawful affidavit in reply to this application. As there is no evidence countering that of the Administrators that supports the application, the application is deemed as unopposed.
14. Were the court to consider the merits of the application, the impugned ruling has been amended by consent at paragraph 84iv in regard to the description of the subject property. The desired amendment that is contested relates to paragraph 84iii of the ruling. While the Administrators aver that the period the court had in mind from which the 1<sup>st</sup> Protestor was required to account for rent collected on property known as Nakuru Langa Langa/130 was September 2020 instead of December 2023 as per the court's ruling, the Protestors think otherwise as per their Advocates' Submissions.
15. I have read through the ruling in issue. Order 45 Rule 1 of the Civil Procedure Rules 2010 provide that a decree or order may be reviewed on three grounds to wit; a mistake or error apparent on the face of the record or discovery of new evidence that could not be tendered earlier or for any other sufficient cause. The Applicants seem to crave review on account of an error on the face of the record. Order 45 Rule 2 of the same Rules allows this court to order such review notwithstanding that it was not the one that made the decision sought to be reviewed, where as is the situation obtaining here, the judge who made the decision is no longer at station.
16. The court had noted in the ruling that the 1<sup>st</sup> Protestor (Timothy Mwangi Kairu) had written a letter dated 1<sup>st</sup> September 2020 to tenants instructing them to start depositing rent into a different bank account from that date. The court agreed with the Administrators that the 1<sup>st</sup> Protestor was to account for rent collected from the said date (September 2020). The period of December 2023 the Court alluded to was clearly an accidental slip or omission on the part of the court also curable under Section 99 of the Civil Procedure Act.
17. The application is therefore merited in this regard. The court's ruling dated 5<sup>th</sup> November 2024 is further amended at paragraph 84iii so that the date from which the 1<sup>st</sup> Protestor is to account for the rent in question is stated as September 2020 instead of December 2023. The parties will bear their own costs of this application.
18. The Administrators' second Notice of Motion dated 5<sup>th</sup> February 2025 seeks the following orders;-
  1. That this Honorable Court does issue Orders of eviction against the 2nd Objector, Faith Wacuka Kairu compelling her to vacate the family (Deceased's) home situate on Title No. Miti Mingi Mbaruk Block 5/1613 (Kiungururia) in compliance with the Judgment and Orders herein given on 5/11/2024, and the OCS Pakawa Police Station to provide the necessary security and supervision thereof.
  2. That the Honourable Court does issue orders compelling the 1<sup>st</sup> Objector, Timothy Mwangi Kairu to produce and hand over the Deceased's three title deed documents in his possession for Titles Nos. Miti Mingi/ Mbaruk Block 3/1613 (Kiungururia), Nakuru/Langalanga/130 and Muguga/Jet Scheme/2381 to the Administrators herein to enable them proceed with the due administration of the Estate herein in compliance with the orders of this Court issued on 5/11/2024 wherein time was of the essence the Administrators having been given 180 days to complete the transmission process.
  3. That this Honourable Court does extend the time period for the Administrators to complete the administration process 6 months from the date the 2 objectors herein comply with the orders as per prayers 1 and 2 above, in vacating the family home and handing over of the 3 title documents to the Administrators.



4. That the costs of the application be paid by the 2 objectors herein since they have, by their actions described herein above in contravention of the Court's orders, necessitated this application.
19. The Protestors also purport to oppose the application vide the document the court has already found to be not an affidavit as known in law. The application is therefore unopposed as well.
20. Having read the court's ruling in question, however, I note that the Protestors are also beneficiaries of the estate in issue. Contrary to the Administrators' implication, the Protestors have not been ordered to vacate any property. Besides, it is only the Environment and Land Court that can order eviction. The court therefore declines to issue eviction orders as desired in Prayer 1 of the application. The OCS Pakawa Police Station is, however, ordered to provide security during subdivision of property known as Miti Mingi/Mbaruk Block 5/1613 as directed by the court in the ruling of 5/11/2024.
21. The Protestors are ordered to surrender Title numbers Miti Mingi/Mbaruk Block 5/1613 (Kiungururia), Nakuru Langa Langa/130 and Muguga Jet Scheme/2381 to the Administrators to enable them complete transmission of the deceased's estate.
22. The Administrators are given a further hundred (100) days to complete the transmission process.
23. Lastly, the parties will bear their own costs, this being a family matter.
24. Ruling accordingly.

**J. M. NANG'EA - JUDGE**

**RULING DELIVERED VIRTUALLY THIS 12<sup>TH</sup> DAY OF MARCH, 2025 IN THE PRESENCE OF:**

Mr. Githiru Advocate for the Administrators

Mr. Rigga Advocate for the Protestors

Court Assistant (Jeniffer)

**J. M. NANG'EA - JUDGE**

