



REPUBLIC OF KENYA



**In re Estate of Jason Wamocho Mabila (Deceased) (Succession Cause  
139 of 2011) [2025] KEHC 4662 (KLR) (9 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4662 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 139 OF 2011**

**REA OUGO, J**

**APRIL 9, 2025**

**IN THE MATTER OF THE ESTATE OF JASON WAMOCHO MABIALE (DECEASED)**

**BETWEEN**

**FRANCIS HARON WAMACHO ..... PETITIONER**

**AND**

**JOB NAIBALE NAIKOBO ..... OBJECTOR**

**AND**

**KEVIN WAMALWA WEKESA ..... INTERESTED PARTY**

**RULING**

1. Francis Haron Wamacho, the petitioner/applicant, seeks a review of the court ruling dated 6/3/2024. He also seeks that the Certificate of Confirmation of Grant dated 19.3.2024 be amended to include all the beneficiaries as per the affidavit of the petitioner in support of the confirmation of grant, sworn on 25.10.2023, and the mediation settlement agreement dated 27.10.2022.
2. The application was opposed by Job Mabila Naikobo, the respondent/ objector.
3. The applicant, in his supporting affidavit , depones as follows: the ruling has an apparent error on the face since it left out his other siblings as per the affidavit sworn on 25.10.2023 in support of the confirmation of grant and the mediation settlement agreement dated 27.10.2022. His family has no problem with their sisters getting their share since they were given by their late father before he passed away. The beneficiaries left out are staying in their respective parcels. The amendment should be done to reflect the realities on the ground since all beneficiaries were catered for. The objector will not be prejudiced by the order.
4. The respondent depones as follows: the ruling delivered on the 6.3.2024 was without error and warrants no disturbance by way of review or otherwise. The applicants have moved the court 8 months



later, after the court had already made considerable progress in the winding up of the estate. There is no explanation for the inordinate delay. Since 2013, he was chased out of the said portion of land, which he knew all along to be his home, and he has been homeless. He urges the court to reject the application.

5. The application was canvassed by way of oral submissions. I have considered the said submissions. Mr. Wanjala, for the applicant, reiterated what is deponed in the applicant's affidavit and referred the court to paragraph 7 of the mediation settlement agreement. He urged the court to grant the application as the applicant seeks to include the daughters of the deceased. The application was opposed. Mr. Alovi submitted as follows: the ruling was delivered on 6.3.2024. The petitioner has moved to court 8 months later, and no reason has been given for the delay. The mediation agreement alluded to is not strange to the court, for when the court made its ruling, the court was aware of the agreement. The fact of some siblings being left out is not new, as the issue was tested during the trial. The petitioner is a serious intermeddler.
6. The applicant seeks a review of the court ruling dated 6.3.2024 on grounds that the court erroneously left out the deceased's daughter mentioned at paragraph 7 of the mediation agreement. Order 45 of the Civil Procedure Rules states as follows; a party can seek a review of a court order on the following grounds, "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".
7. The applicant has approached this court on the ground that there is an error apparent on the face of the record. In the case *Republic v Medical Practitioners & Dentists Board & Another & another; MIO1 on behalf of MIO2 (a Minor) & another (Interested Party); King'anga (Exparte)* (Miscellaneous Civil Application 59 & 63 of 2019 (Consolidated)) [2021] KEHC 298 (KLR) (Judicial Review) (16 November 2021) Justice Mativo ( as he then was) held as follows;  

“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 a 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 proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review...

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 an elaborate argument or more than one opinion.
8. In this matter, the applicant states that there was an error on the face of the record because the court did not consider the sisters as stated at per paragraph 7 of the mediation agreement. The applicant did refer to his affidavit and the mediation agreement in his evidence. In my ruling, I stated at paragraph 15 that the affidavit of Job revealed that the daughters had not demanded to be included in the distribution of the deceased's estate. It is a fact which I considered. In my view, there is no error apparent on the face of the record. If the court reached an erroneous decision, then the applicant should have appealed. Further, the application was filed 8 months after the ruling, although the applicant states that the respondent will not be prejudiced, the delay has not been sufficiently explained. The application lacks merit, and it is dismissed with no order as to costs.



**DATED, SIGNED, AND DELIVERED AT BUNGOMA THIS 9<sup>TH</sup> DAY OF APRIL 2025.**

**R.E.OUGO**

**JUDGE**

In the presence of:

Mr. Wanjala - For the Applicant

Job Mabiale Naikobo -Respondent

Wilkister - C/A

