



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Evans Gikuni Ngata (Deceased) (Succession Cause
621 of 2009) [2025] KEHC 7150 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7150 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 621 OF 2009**

JM NANG'EA, J

MAY 16, 2025

IN THE ESTATE OF THE LATE EVANS GIKUNI NGATA (DECEASED)

BETWEEN

TERESIAH WANJIRU 1ST APPLICANT

ELIZABETH WAMBUI 2ND APPLICANT

AND

ELIUD MATHU NJOROGE 1ST RESPONDENT

JOSEPH NJUGUNA NJOROGE 2ND RESPONDENT

JOSEPH MWANGI NDEGWA 3RD RESPONDENT

BHAVIK RAV JIBHAI PATEL 4TH RESPONDENT

SUSAN JESIRE KEMEI 5TH RESPONDENT

PHILLIS WANJERI WANYOIKE 6TH RESPONDENT

MORUMBASI B. MAGOMA 7TH RESPONDENT

ENOCK NYAMOSI OBAYO 8TH RESPONDENT

AMOS MWANGI MACHARIA 9TH RESPONDENT

DEBRA OMBATI ZACHARY 10TH RESPONDENT

DORIS GESARE AYIENDA 11TH RESPONDENT

MARY C. WANJIKU 12TH RESPONDENT

KULWINDER S. TARLOCHAN 13TH RESPONDENT

SAMMY MBUGUA NGANGA 14TH RESPONDENT

KULJIT SINGH 15TH RESPONDENT



KAMAU JOHN WAWERU	16TH RESPONDENT
MIKE KIPKIRUI ROP	17TH RESPONDENT
JOYCE CHEPKORIR YATOR	18TH RESPONDENT
LOICE NJOKI KAMAU	19TH RESPONDENT
JOSPHAT MANGURU	20TH RESPONDENT
CALVINS ANDITI MALOWA	21ST RESPONDENT
SHINALBEN REVAL KUMAR	22ND RESPONDENT

RULING

1. For the court’s determination are two Chamber Summons applications dated 16th October, 2023 and 13th December 2024 brought by the same parties. I shall begin with the latter application dated 13th December 2024.
2. The Applicants pray for the following reliefs;-
 - a. Spent
 - b. Review of the court’s order dated 30th October 2024.
 - c. That the application dated 16th October 2023 be set down for hearing as soon as possible.
 - d. That the costs of the Application be provided for.
3. The 1st Applicant (Teresiah Wanjiru) swore an affidavit in support of the application as authorized by the 2nd Applicant (Elizabeth Wambui Gikuni) who is her sister and joint Administratrix of the deceased’s estate. The Court is told that by judgement delivered on 29th March 2023 this court cancelled titles over parcels of land forming the deceased’s estate that had been transmitted to the Respondents, the Applicants’ brothers, vide Certificate of Confirmation of Grant herein. Consequently, Parcel No. Kampi Ya Moto/menengai Block 1/502 is said to have been “re-instated” by the Land Registrar. According to the Applicants, there are no titles in possession of the Interested Parties over land they purportedly purchased from the Respondents in the circumstances the court having invalidated the sale.
4. The Applicants therefore contend that the Court erroneously issued stay orders in respect of a parcel of land known as Kampi Ya Moto/menengai Block 1/502 (MANG’U) which had been restored to its original state comprising 4.53 Hectares. The Respondents and the Interested Parties are accused of colluding to frustrate completion of transmission of the deceased’s estate.
5. For the stated reasons inter alia the Court is urged to allow the application.
6. The 1st Respondent (Eliud Mathu Njoroge) swore an affidavit in reply opposing the application. He avers that the Court arrived at its decision of 30th October 2024 consciously and, in any event, the Applicants have not extracted and exhibited the impugned order contrary to the requirements of the law. On advice of his legal Counsel, the 1st Respondent deposes that the Applicants have not demonstrated any error apparent on the record; or discovered new evidence that offer exercise of due diligence could not be tendered earlier or shown any other sufficient cause meriting review as provided for by Order 45 of the Civil Procedure Rules 2010.



7. According to the 1st Respondent review of the said order as desired would substantially alter the character of the impugned order and unlawfully take away the Respondents' and the Interested Parties' right of appeal. It is contended that only the Court of Appeal can grant any remedies for the Applicants in the circumstances.
8. The Interested Parties filed Grounds of Opposition dated 6th February 2025 in the following terms inter alia;
 1. That the Applicants unilaterally extracted orders arising from the judgement of 29th July 2024.
 2. That the Applicants cannot seek to review orders issued on application they did not oppose.
 3. That the order of 30th October 2024 is necessary to preserve the gravamen or substratum of the appeal.
 4. That this application amounts to inviting the court to sit on appeal on its own orders.
 5. That the Applicants are guilty of laches having brought the two applications after an unreasonable delay.
 6. That the Application is Res judicata and the Applicants fully participated in the disposal of the application giving rise to the orders in issue.
9. I have seen the Written Submissions of the Applicant which appear to have been filed long after the ruling date of the applications had been fixed. This conduct is irregular as no leave was sought and obtained. The other parties may not also have a chance to respond to the Submissions. The Applicants' Submissions shall therefore be disregarded.
10. This is essentially an application for review of the Court's order of 30th October 2024. As pointed out by the Respondents, the order has not been extracted and exhibited. Be that as I may, the order follows the Interested Parties' application dated 14th August 2024 seeking inter alia stay of distribution of the deceased's estate in relation to a parcel of land known as Kampi Ya Moto/menengai Block 1/502 or subdivision therefrom known as Kampi Ya Moto/menengai Block 1/1667 pending hearing and determination of an intended appeal.
11. When the application came up for mention for directions on 30th October 2024, it transpired that the Applicants had not made any filings opposing the same. The Court then deemed the application as opposed and granted the prayer for stay of distribution of the stated property pending the intended appeal as adverted to hereinabove. This is the order that provoked the application dated 13th December 2024.
12. Indeed this Court's rulings of 29th March 2023 and 29th July 2024 alluded to by the Applicants confirm that Original title No. Kampi Ya Moto/Menengai/Block 1/502 and all subsequent subdivisions therefrom were cancelled following revocation of Certificate of Confirmation of Grant issued to the Respondents by an earlier ruling dated 14th January 2021. The record in this regard does not seem to be disputed by the Respondents and the Interested Parties.
13. The issue for determination is whether the Court's order of 30th October 2024 ought to be reviewed as prayed by the Applicants. Order 45 of the Civil Procedure Rules 2010 gives the Court discretion to review and/or vacate its previous orders, decrees, or judgement on three grounds to wit;
 - a. A mistake or error apparent on the record.



- b. Discovery of new and important evidence that despite due diligence could not be produced earlier.
 - and
 - c. For any other sufficient cause.
14. It is apparent that this application is predicated upon a purported error or mistake on the part of the Court in issuing the order of 30th October 2024. It is indisputable based on the record that the transmission and subsequent transfer of the Parcel of land No. Kampi Ya Moto/menengai Block 1/502 in question together with subdivisions therefore were cancelled by the previous Court decisions adverted to in this ruling.
15. The Court of Appeal in Civil Appeal No. 2111 of 1996 (National Bank of Kenya Limited vs Ndung’u Njau) posited that where review is sought on such grounds as urged by the Applicants herein, in the error must be self evident and should not require an elaborate argument to be established. The Court added that review cannot be ordered on the ground that a different judge could have taken a different view of the matter or on the basis that the court has made an incorrect exposition of the law. Clearly it is because those are suitable grounds for appeal and not review. This legal position has been underscored in many other more recent judicial determinations.
16. I concur with the Respondents that the Applicants irregularly failed to exhibit the contentious order. Nevertheless, the order in question is obvious to the parties and I shall determine the application on its merits.
17. To the extent that the court ordered stay of distribution and transmission of subdivisions from Parcel No. Kampi Ya Moto/menengai Block 1/502, particularly sub-division No. Kampi Ya Moto/menengai Block 1/1667 referred to in the application dated 14th August 2024 giving rise to the impugned order which are no long in existence, that was an error on the face of the record and the order is reviewed accordingly. This is because the original title had been restored by the said previous court decisions.
18. The Summons dated 13th December 2024 therefore succeeds to this extent only. For avoidance of doubt, distribution and/or transmission of the deceased’s estate without reference to any sub-divisions from the original title in question stands stayed pending hearing and determination of the intended appeal as the Applicants did not oppose the application.
19. Turning to the Chamber Summons dated 16th October 2023, it is for the following orders;
- a. That the application be certified as urgent and be heard on a priority basis.
 - b. That the honourable court do grant the Deputy Registrar of the high court to sign the requisite survey forms for parcels Bahati/Kabatini Block 1/3099 (Ndeffo), Kampi ya Moto/Menengai Block 1/502 (Mang’u), Dundori/Muguathi Block 1/1872 (Wanyororo A) and Githunguri/Githiga/3178(sic).
 - c. That the Deputy Registrar do sign the land board consent forms and transfers of the subdivision of parcels Bahati/Kabatini Block 1/3099 (Ndeffo), Kampi ya Moto/Menengai Block 1/502 (Mang’u), Dundori/Muguathi Block 1/1872 (Wanyororo A) and Githunguri/Githiga/3178 to the respective beneficiaries(sic).
 - d. That costs be provided for.
20. The 2nd Applicant (Elizabeth Wambui Gikuni) avers purportedly with the consent of the 1st Applicant (Teresiah Wanjiru) that following cancellation of transfer of the land comprising the estate to the



Respondents their surveyor carried out sub-division of the land. The relevant Mutation and Land Control Forms were then sent to the Respondents' Advocates for execution but the same were not returned duly signed or at all, thus frustrating the process of distribution of the estate. The alleged conduct of the Respondents made this application necessary, according to the Applicants.

21. The Respondents oppose the application.
22. In light of the order staying distribution and/or transmission of the estate pending hearing and determination of the intended appeal, the orders craved in this application cannot issue as they negate the stay order. I shall not therefore decide this application on merits and the same is struck out.
23. As this is a family matter, the parties shall bear their own costs incurred in the two applications.
24. Ruling on the two applications accordingly.

J. M NANG'EA, JUDGE.

RULING DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT THIS 16TH DAY OF MAY, 2025 IN THE PRESENCE OF:

Mr. Maina Advocate for Ms Njoroge Advocate for the Applicants

Mr. Karanja Advocate for the Respondents

Mr. Ayuka Advocate for the Interested Parties

The Court Assistant (Jeniffer)

J. M. NANG'EA, JUDGE.

