



REPUBLIC OF KENYA



**In re Estate of Murunga Nalwelsie (Deceased) (Succession Cause
3 of 2002) [2025] KEHC 5751 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5751 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 3 OF 2002**

REA OUGO, J

MAY 9, 2025

IN THE MATTER OF THE ESTATE OF MURUNGA NALWELSIE (DECEASED)

BETWEEN

JAMIN MURUNGA APPLICANT

AND

GEORGE MASINDE MURUNGA 1ST RESPONDENT

ELIUD SIUNDU MURUNGA 2ND RESPONDENT

ERNEST MASIKA MURUNGA 3RD RESPONDENT

RAYMOND WAFULA MURUNGA 4TH RESPONDENT

PROTUS WANYONYI MURUNGA 5TH RESPONDENT

RULING

1. Jamin Murunga the applicant has filed a motion dated the 8th of April 2025 seeking the following orders;
 - i. The Honourable Court be pleased to review and set aside the order issued on 13th March 2025 striking out the Applicant's Notice of Motion dated 18/12/2023.
 - ii. The Honourable Court be pleased to hear and determine the said application dated 18/12/2023 on its merits.
 - iii. The Honourable Court be pleased to stay the implementation and/or execution of the order made on 29/09/2023 pending the hearing and determination of this application.
 - iv. The costs of this application be provided for.



2. The applicant filed an affidavit in support of the application. The application was not opposed. The applicant depones that his application dated 18/12/2023 which was for reconsideration of the ruling and orders was struck off on 13/3/2025 not on merits due to failure to attach an order. He has now attached the order dated 29/9/2023 and the order dated 13.3.2025 to this application. The matter relates to a family land of great sentimental and emotional value and the orders issued risk permanent alienating family land without affording all parties an opportunity to be heard.
3. This court in its Ruling dated 13.3.2025 struck off the application dated 18.12.2023. Once an application is struck it ceases to exist. It cannot be revived by way of review. The proper procedure would be to file a fresh application seeking the same orders that were in the previous application, with the necessary certified ruling/order attached to the applicant's affidavit. The court did not consider the merits of the said application. There is nothing to review or set aside after an application is struck off. Furthermore, the applicant cites Order 45 of the Civil Procedure Rules, but he has failed to demonstrate that his review application complies with the conditions set out in Order 45 Rule 1 of the Civil Procedure Rules, that, there is a 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. An application that is struck off cannot be reinstated for hearing on grounds of review or set aside as sought by the applicant. Prayer 3 should be part of the application to be filed by the applicant. I therefore decline to grant the orders as sought. The application dated 8.4.2025 is dismissed with no order as to costs.

DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THIS 9TH DAY OF MAY 2025.

R.E.OUGO

JUDGE

In the presence of:

Mr. Omeri h/b Mr. Kapten - For the Applicant

Respondent - Absent

Wilkister - C/A

