



**In re Estate of Kiprono Miso (Deceased) (Miscellaneous Application Probate & Administration E011 of 2021) [2025] KEHC 9223 (KLR) (18 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9223 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
MISCELLANEOUS APPLICATION PROBATE & ADMINISTRATION E011 OF 2021**

**JR KARANJA, J**

**JUNE 18, 2025**

**IN THE MATTER OF THE ESTATE OF KIPRONO MISOI:.....(DECEASED)**

**BETWEEN**

**JEPKINYOR MISOI ..... PETITIONER**

**AND**

**DANIEL SIRWANII ..... PERJURER**

**AND**

**TECLA CHEPCHUMBA ..... OBJECTOR**

**RULING**

1. Pursuant to the petition for letters of administration intestate made by the two Petitioners Jepkinyor Miso and Daniel Kipchirchir Sirwanii on 19<sup>th</sup> August 2021, respecting the estate of the late Kiprono Miso [deceased], the subject grant of letters of administration was issued by the court on the 24<sup>th</sup> May 2022 to the two petitioners to undertake administration of the estate in accordance with the law and to render a just and true account thereof whenever required by law to do so.

2. The affidavit in support of the petitioner indicated that the deceased was survived by two widows including Tereza Chemeli David [deceased] as the First Wife and the First Petitioner herein as the Second Wife.

The children of the deceased from both his two houses included four [4] sons, three of whom are now deceased.

The only surviving son was the Second Petitioner herein. The deceased's daughter were seven [7] in number.

All in all, the children of the deceased in both his houses numbered eleven [11].



3. The estate property was comprised of four [4] parcels of land including, Land Parcels No. Nandi/Surungai/2 and 16 and Land Parcels No. Nandi/Chepterwai/271 and 292.

There was no liability attached to the estate. Two or so years after the issuance of the grant, the Petitioners took out the summons for confirmation of grant dated 4<sup>th</sup> August 2022 and on the 17<sup>th</sup> April 2023, the grant was confirmed and the certificate of confirmation of grant was accordingly issued.

4. The entire estate property comprising of the aforementioned parcels of land was wholly distributed to the First Petitioner as per the schedule on the certificate of confirmation of grant dated 17<sup>th</sup> April 2023.

However, on the 10<sup>th</sup> May 2023, summons for revocation of the grant were taken out by Tecla Chepchumba [Objector].

The objection was heard by this court by way of affidavit evidence and written submissions and was allowed.

It was therefore ordered that the grant dated 24<sup>th</sup> May 2022 together with the certificate of confirmation of grant dated 17<sup>th</sup> April 2023 be revoked and a fresh grant do issue in the joint names of the Petitioners and the Objector.

5. Indeed, the fresh grant of letters of administration intestate was issued on 4<sup>th</sup> July 2024 and was to be confirmed within a period of four [4] months from the date of issue.

Apparently, being aggrieved by the aforementioned order, the Petitioner/ Applicants vide the summons dated 25<sup>th</sup> June 2024 now seek a review of the ruling of this court made or delivered on 18<sup>th</sup> June 2024.

6. The application is essentially brought under Order 45 of the Civil Procedure Rules on grounds set out in the summons and buttressed by the Applicants' averments and facts in the supporting affidavit dated 25<sup>th</sup> June 2024 deponed by the First Petitioner.

The Objector opposed the application on the basis of the grounds and averments contained in her replying supporting affidavit dated 27<sup>th</sup> February 2025.

Hearing of the application was by written submission which were duly filed by both sides through Kevin Nyenyire & Company Advocates for the Applicants and Bitok and Sambu Advocates for the Objector.

7. Having considered the application on the basis of the supporting grounds as against the opposition thereto and the rival submissions, this court is of the view that the basic issue for determination is whether the Applicants have demonstrated sufficient and satisfactory grounds for exercise of this court's discretion in their favour in issuing an order of review respecting the impugned ruling made on the 18<sup>th</sup> June 2024.

8. Order 45 of the Civil Procedure Rules is among the Civil Procedure Rules which apply in succession proceedings by dint of Rule 63 of the Probate and Administration Rules and Rule 1 of the Order provides that: -

“ 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. The Applicants herein seek a review of the impugned ruling of this court on account of a supplementary affidavit filed by the Objector/Respondent at the hearing of her application for revocation of the grant which resulted in the impugned ruling so that the said affidavit dated 8<sup>th</sup> May 2024 be expunged from the record for want of service upon the Applicants.

In effect, the Applicants desire that the impugned supplementary affidavit be removed from the record so that the court may render a fresh ruling without placing reliance on the said affidavit which was improperly on the record.

10. This factor is greatly emphasized by the Applicants in the present application and in their submissions. However, it falls short of being a proper or satisfactory grounds for which an order of review may be granted. More so, considering that a review of exercise of discretion is not as a matter of course to be undertaken in all decisions taken by a court and that it is not a right but an equitable remedy which call for a basis to be taken by the Applicant to the satisfaction of the court. Further, a review application is not an appeal or a chance for the Applicant to re-argue his application. [See, Parliamentary Service Commission Vs. Martin Nyaga Wambora and Others Supreme Court Application No. 8 of 2017].

11. In the above cited case, the Supreme Court held that in an application for review of exercise of discretion the Applicant has to demonstrate, to the satisfaction of the court, how the court erred in the exercise of its discretion or exercised it whimsically. That, during such review application in focus is the decision of the court and not the merit of the substantive motion subject of the decision under review.

12. The present application does not demonstrate any of the grounds specified in Order 45 [1] Rule 1[1] of the Civil Procedure Rules nor any other sufficient reason for this court to exercise discretion in favour of the Applicants and allow the application.

As was held by the Court of Appeal in National Bank of Kenya Vs. Ndungu Njau [1997] eKLR, 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 evidence and should not require an elaborate argument to be established.

No such error or omission has been demonstrated in this application.

13. An order or decision perceived to be erroneous by an aggrieved party cannot be corrected in the guise of exercise of power of review and while considering an application for review, the court must confine its adjudication with reference to material which was available at the time of the initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order or decision as vitiated by an error apparent [See, Republic Vs. Advocates Disciplinary Tribunal Ex-parte Apollo Mboya [2019] eKLR]

14. For all the reasons and observations foregoing it is clear that Applicants have failed to demonstrate sufficient and satisfactory grounds for exercise of the court’s discretion in their favour.

The present application is therefore dismissed with costs to the Objector.



Ordered accordingly.

**DELIVERED AND DATED THIS 18<sup>TH</sup> DAY OF JUNE, 2025**

**HON. J. R. KARANJAH,**

**JUDGE**

