



In re Estate of William Kiptanui Chepkwony (Deceased) (Probate & Administration 39 of 2022) [2025] KEHC 8661 (KLR) (18 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8661 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 39 OF 2022
RN NYAKUNDI, J
JUNE 18, 2025**

IN THE MATTER OF THE ESTATE OF WILLIAM KIPTANUI CHEPKWONY (DECEASED)

BETWEEN

JOSPHAT KIPTUM 1ST APPLICANT

RUTH JEPKOECH TANUI 2ND APPLICANT

AND

TERESA CHEBET 1ST RESPONDENT

DANIEL CHERUIYOT TANUI 2ND RESPONDENT

RULING

1. Before me for determination is a Notice of motion 11th March, 2025 expressed to be brought under the provisions of Section 45 Rule 1 of the Civil Procedure Rule and Section 80 of the Civil Procedure Code. The applicants seek orders that:
 - a. Spent
 - b. This Honorable court be pleased to review and vary the ruling delivered on 23rd December, 2024.
 - c. The ruling on the mode of distribution be reviewed as per the draft annexed hereto.
 - d. That pending the hearing and determination of this Application inter-parties, this Honorable Court be pleased to issue a temporary Order of injunction restraining the Respondent whether by herself, her servants and/or agents or other persons acting on her behalf or claiming interest through the Respondent from entering, trespassing, planting, erecting any structures permanent or otherwise, wasting, damaging, alienating, charging in the properties known as Uasin Gishu/Taspagoi Settlement Scheme/805 measuring 7.29 ha (18 acres),



Uasin Gishu/Taspagoi Settlement Scheme/806 measuring 3.2 ha (7.93 acres), Uasin Gishu/Taspagoi Settlement Scheme/807 measuring 3.7 ha (9.29 acres), Motor Vehicle Registration No. Kca 0851 And Money Held In Co-operative Bank Eldoret Branch Account Number XXXXXXXXXXXXXXXX pending the hearing and determination of this Application.

- e. That this Honorable Court be pleased to make an order that status quo be maintained in regards to all the properties known as Uasin Gishu/Taspagoi Settlement Scheme/805 measuring 7.29 ha (18 acres), Uasin Gishu/Taspagoi Settlement Scheme/806 measuring 3.2 ha (7.93 acres), Uasin Gishu/Taspagoi Settlement Scheme/807 measuring 3.7 ha (9.29 acres), Motor Vehicle Registration No. Kca 0851 And Money Held In Co-operative Bank Eldoret Branch Account Number XXXXXXXXXXXXXXXX pending review of the mode of distribution and survey in prayer 3 below.
 - f. That this court be pleased to order a survey of the parcels of land number Uasin Gishu/Taspagoi Settlement Scheme/805 measuring 7.29 ha (18 acres), Uasin Gishu/Taspagoi Settlement Scheme/806 measuring 3.2 ha (7.93 acres) and Uasin Gishu/Taspagoi Settlement Scheme/807 measuring 3.7 ha (9.29 acres) by the County Land Surveyor, Uasin Gishu County to provide a surveyor's report to ascertain the rocky and arable land.
 - g. That the County Land Surveyor be directed to file a report of the survey in court within thirty (30) days from the date of conducting the survey process.
 - h. To effect the implementation of prayer (e) and (f) above, the Honorable Court be pleased to issue an Order directing the Officer Commanding Station (OCS) Turbo Police Station to supervise the survey process.
2. The application is anchored on grounds that:
- a. That the Applicants moved this court vide petition for letters of grant of administration intestate dated 16th March 2022.
 - b. That an amended grant of letters of administration was issued to the 1st Applicant, 2nd Applicant and Daniel Cheruiyot Tanui on 14th November 2023.
 - c. That the late William Kiptanui Chepkwony (deceased) was the registered owner of the parcels of land known as Uasin Gishu/Taspagoi Settlement Scheme/805 measuring 7.29 ha (18 acres), Uasin Gishu/Taspagoi Settlement Scheme/806 measuring 3.2 ha (7.93 acres) and Uasin Gishu/Taspagoi Settlement Scheme/807 measuring 3.7 ha (9.29 acres).
 - d. That the court erroneously listed Uasin Gishu/Taspagoi Settlement Scheme/802, Uasin Gishu/Taspagoi Settlement Scheme/803 and Uasin Gishu/Taspagoi Settlement Scheme/804 properties which are not registered in the name of the late William Kiptanui Chepkwony (deceased).
 - e. That the court while delivering the ruling dated 23rd December 2024 inadvertently omitted to pronounce the share of Getrude Chebichii a daughter of the 3rd house. This occasions miscarriage of justice and an error apparent in their record.
 - f. That the court while delivering the ruling dated 23rd December 2024 failed to consider the fact that Theresa Chebet Seroney had only paid for three (3) acres even though she had purchased 4.3 acres out of Uasin Gishu/Taspagoi Settlement Scheme/807.
 - g. That Theresa Chebet Seroney owes the estate Kenya Shillings One Hundred and Fifty Thousand (Kshs. 150,000/=).



- h. That the court while delivering the ruling dated 23rd December 2024 inadvertently omitted to factor in the liabilities of the late William Kiptanui Chepkwony (deceased) as per the proposed mode of distribution by the Applicants.
 - i. That Edward Kiplimo Cheruiyot was apportioned five (5) acres instead of six (6) acres curved out of Uasin Gishu/Taspagoi Settlement Scheme/807.
 - j. That John Kipkorir Seurey was apportioned one (1) acre instead of 1.3 acres curved out of Uasin Gishu/Taspagoi Settlement Scheme/806.
 - k. That Daniel Cheruiyot Benefited Thrice I.e Motor Vehicle Registration No. KCA 085L, 1.09 acres and 1.09 acres curved out of Uasin Gishu/Taspagoi Settlement Scheme/805.
 - l. That Paul Kipngetich Rono who is entitled to one (1) acre curved out of Uasin Gishu/Taspagoi Settlement Scheme/806 was left out despite his name being listed as a purchaser in the 1st and 2nd Administrator's Applicants proposed mode of distribution dated 12/2/2024.
 - m. That Josiah Kipruto Kurgat who is entitled to 0.2 acres curved out of Uasin Gishu/Taspagoi Settlement Scheme/806 was left out despite his name being listed as a purchaser in the 1st and 2nd administrator's proposed mode of distribution dated 12/2/2024
 - n. That David Kimutai Ngetich And Esther Cherop Pyeko were left out despite their names being listed as purchasers in the 1st and 2nd administrator's proposed mode of distribution dated 12/2/2024. However, the honorable court awarded David Kimutai Ngetich one (1) acre out of Uasin Gishu/Taspagoi Settlement Scheme/806 instead of 4.5 acres to both David Kimutai Ngetich And Esther Cherop Pyeko.
 - o. That Vincent Kipkemei Lagat was erroneously awarded 1.525 acres as opposed to 1.5 acres out of Uasin Gishu/Taspagoi Settlement Scheme/806.
 - p. That the money held in Co-operative Bank Eldoret Branch Account Number XXXXXXXXXXXXXXXX be shared by the 1st and 3rd houses because Daniel Cheruiyot benefited from the sale of Motor Vehicle Registration No. KCA 085L, thirty (30) bags of maize and five (5) cows.
 - q. That the money held in Co-operative Bank Eldoret Branch Account Number XXXXXXXXXXXXXXXX be used to facilitate survey and the remaining amount be shared among the 1st and 3rd houses.
 - r. That as a result, the Applicants have now filed this application seeking the review and varying of the orders from ruling delivered on 23/12/2025.
 - s. That unless the orders sought are granted, the Applicants shall not be able to undertake the process of transmission, hence all the issues in controversy shall remain unsolved.
3. In response to the application, one Daniel Cheruiyot Tanui swore a replying affidavit in which he deposed as follows:
- a. That I am one of the administrators of the Estate of William Kiptanui Chepkwony and a representative of the beneficiaries of the 2nd house.
 - b. That the Certificate of Confirmation of Grant was issued on 20th September 2024.



- c. That all the parcels of land comprising Uasin Gishu /Tapsagoi/802, 803, 804, 805, 806 and 807 that have been distributed belong to the deceased and are registered in the name of William Kiptanui Chepkwony (deceased).
 - d. That indeed Getrude Chebichii was omitted during distribution and distribution of her portion measuring One Decimal Zero Five Nine (1.059) acres was made to me.
 - e. That the Certificate of Confirmation of Grant be amended so as to indicate the name of Getrude Chebichii who is a beneficiary of a portion measuring One Decimal Zero Five Nine (1.059) acres in parcel number Uasin Gishu /Tapsagoi/802.
 - f. That Theresa Chebet Seroney had not paid the balance of Kenya Shillings One Hundred and Fifty Thousand (Kshs. 150, 000/=) of the purchase price and will pay the balance to the Estate of the deceased.
 - g. That there is no evidence that has been provided by the Applicant to prove that the Estate of William Kiptanui Chepkwony has any liabilities as alleged.
 - h. That Edward Kiplimo Cheruiyot is entitled to a portion measuring Five (5) acres in parcel number Uasin Gishu /Tapsagoi Settlement Scheme/807 as indicated in the sale agreement.
 - i. That John Kipkorir Seurey is also entitled to a portion measuring One (1) acre in parcel number Uasin Gishu /Tapsagoi Settlement Scheme/806 as per the land sale agreement.
 - j. That all the purchasers from the Estate of the deceased were provided for as per the land sale agreements provided.
4. In a further response, one Josphat Tum deposed that:
- a. That parcel numbers Uasin Gishu/Tapsagoi Settlement Scheme/802, 803 and 804 do not form part of the Estate of William Kiptanui Chepkwony as the properties are not registered in his name.
 - b. That Theresa Chebet Seroney left a balance of Kenya Shillings One Hundred and Fifty Thousand (Kshs. 150,000/=) for her to get three (3) acres curved out of Uasin Gishu/Tapsagoi Settlement Scheme/807 and should therefore receive the three (3) acres and not four point three (4.3) acres as indicated in the Ruling and pay Kenya Shillings One Hundred and Fifty Thousand (Kshs. 150, 000/=) to the estate.
 - c. That the Estate Of William Kiptanui Chepkwony has liabilities as listed in our Memorandum under the Schedule of Liabilities dated 26th September 2024 who are ready and willing to testify in court when called upon and listed in our proposed mode of distribution.
 - d. That Edward Kiplimo Cheruiyot is entitled to Six (6) acres curved out of parcel number Uasin Gishu/Tapsagoi Settlement Scheme/807 and not Five (5) acres as alleged by the Respondents in their Replying Affidavit.
 - e. That John Kipkorir Seurey is entitled to One point three (1.3) acres curved out of parcel number Uasin Gishu/Tapsagoi Settlement Scheme/806 and not One (1) acre.
 - f. That our proposed mode of distribution captured this but it was not challenged.
 - g. That Josiah Kipruto Kurgat is entitled to 0.2 acres curved out of parcel number Uasin Gishu/Tapsagoi Settlement Scheme/806 as per the mode of distribution.



- h. That Getrude Chebichii is entitled to 1.059 acres curved out of parcel number Uasin Gishu/Taspagoi Settlement Scheme/805 and not Uasin Gishu/Taspagoi Settlement Scheme/802.

Analysis and determination

5. Under section 80 of the *Civil Procedure Act* and order 45 rule 1 of the Civil Procedure Rules, the court may review its decision, inter alia, on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.
6. Having read through the application and the replying affidavit together with the applicant's submissions, the only issue that presents itself for determination is whether there is a mistake or error on the face of the record or any sufficient reason to justify review of the judgment herein.
7. The Supreme Court of India in the case of *Aribam Tuleshwar Sharma v Ariban Pishak Sharma* (1979) 45CC 389, 1979(11) UJ 300 SC, held that:

“The power of review may be exercised on the discovery of new and important matter or evidence which, after exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercise on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.”

8. Similarly, the said court in *Ajit Kumar Rath vs State of Orisa & Others*, 9 Supreme Court Cases 596 at Page 608 stated as follows:

“The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression “any other sufficient reason” means a reason sufficiently analogous to those specified in the rule”

9. In discussing the guiding principles on the issue of review, the court in the case of *Paul Mwaniki v National Hospital Insurance Fund Board of Management* [2020] eKLR pronounced itself as follows:

“I am clear in my mind that the reasons offered by the applicant do not qualify to be ‘sufficient reason’ within the meaning of the rules cited above nor are they analogous or ejusdem generis to the other reasons stipulated in Order 45 Rule 1. For this holding I rely on *Evan Bwire vs Andrew Nginda* where the court held that ‘an application for review will only be allowed on very strong grounds particularly if its effect will amount to re-opening the application or case a fresh. The principles which can be culled out from the above noted authorities are: -



- i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
- ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
- iii. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
- iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- v. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
- vi. While considering an application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
- vii. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
- viii. 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 any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
- ix. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
- x. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1."

10. Having established the legal basis for review, it is imperative to properly examine the specific grounds raised by the Applicants to determine whether they meet the threshold for review under the law. The Court notes that several issues have been raised by the Applicants, some of which the Respondents have conceded to, while others remain contested. I shall address each of these issues seriatim.
11. First, regarding the parcels of land identified as Uasin Gishu/Taspagoi Settlement Scheme/802, 803, and 804, the Applicants contend that these properties were erroneously included in the Court's ruling dated 23rd December 2024, as they are not registered in the name of the deceased William Kiptanui



- Chepkwony. The Respondent, Daniel Cheruiyot Tanui, however, maintains that all parcels (802-807) belong to the deceased. Upon careful examination of the evidence before me, it appears that there is a genuine dispute as to the ownership of parcels 802, 803, and 804. This presents a material fact that warrants verification, as inclusion of properties not belonging to the deceased would constitute an error apparent on the face of the record.
12. Of equal significance is the acknowledged omission of Getrude Chebichii, A daughter of the 3rd house, from the distribution order. It is noteworthy that this omission is not contested by the Respondent, though the parties diverge on the question of which parcel should accommodate her entitlement. The Respondent proposes allocation from parcel 802, while the Applicants advocate for parcel 805. This Court observes that the inadvertent exclusion of a rightful beneficiary from an estate distribution is precisely the type of error contemplated by Order 45 rule 1, one that is apparent on the face of the record and strikes at the fundamental fairness of the distribution process.
 13. The issue of Theresa Chebet Seroney's entitlement raises questions that fall outside the proper scope of this Court's probate jurisdiction. The primary function of this Court in probate matters is to ascertain the rightful beneficiaries of the deceased, identify the free property of the estate, and effect an equitable distribution thereof. The commercial arrangements between individual purchasers and the administrators, including questions of outstanding balances, payment schedules, or proportionality between payments made and land allocated, are matters that properly fall within the administrative domain of the estate's administrators. This Court cannot and should not be drawn into the business of resolving disputes that arise from such transactions. Any discrepancies in payment obligations or entitlements flowing from commercial agreements with the estate are matters for the administrators to resolve in their capacity as representatives of the estate's commercial interests.
 14. The Applicants have further drawn the Court's attention to the estate's liabilities, contending that these were outlined in their Memorandum under the Schedule of Liabilities dated 26th September 2024 but were not factored into the distribution formula. The Respondent has challenged this assertion, arguing that no evidential foundation has been laid to substantiate these claimed liabilities.
 15. This court has undertaken a balancing Act underpinned on rival affidavits going back to the genealogy of this litigation including the contentious issues touching on the certificate of confirmation of grant dated 20.9.2024. In essence the evidential material on the face of it falls within the scope of Article 50 (6)(A) & (B) of *the constitution*. The significant part of it makes reference to the rights of an accused person but it cannot be gainsaid that the whole of the Article as promulgated imports the fair trial rights in adjudication of disputes. It is not therefore an article which is a preserve of the branch of law governing the Criminal Justice System. Be that as it may be invoking the doctrine of pari- materia this provisions are applicable to the issues being canvassed by each of the beneficiaries to this Succession Cause. The superior courts have spoken on the emerging principles in construing the constitutional imperatives of what constitutes new and compelling evidence.
 16. That is in the cases of Rose Kaiza vs Mpanju Kaiza (2009) eKLR in which the court outlined the principles that a litigant must satisfy the court in claiming new and compelling evidence the court outlined the principles as:
 - a. The material placed before it in accordance with the formalities of the law do prove the existence of the facts alleged
 - b. That the existence of the evidence was not within his knowledge
 - c. The applicant acted with due diligence



In addition the case of Ramathan Juma Abdalla & 2 Others vs Republic (2012) eKLR in which the court held that: “ Black Law Dictionary 8th edition defines “new” as recently discovered, recently come into being and the concise oxford dictionary defines compelling as “Powerful evoking attention or admiration it follows therefore that the evidence must have been recently discovered or has just come into being and is evidence that will evoke attention and arouse a great deal of interest.

17. I do not know whether to classify the various averments in the affidavit as constituting new and compelling evidence capable of this court exercising discretion to re-open the dispute on distribution of the estate. One of the very key criteria is that the evidence in question could not have been obtained even with reasonable diligence at a time the summons for confirmation was being prosecuted by the administrators all that at the time it was not available to the Applicants. That is a moot question which cannot be answered at this stage to constitute a remedy on this contested estate. Just as a reminder to the beneficiaries, the intestate estate is governed by Section 35, 36, 37, 38, 40, & 42 of the Law of Succession Act. The typology of distribution is very clear within the legislative scheme. Therefore, whether the evidence is new and compelling for this given circumstances can only be ascertained from the declarations I would be making shortly which is to be complied with by the administrators and any of the beneficiaries who is looking at the certificate of confirmation of grant from a camouflaged legal lens. There has been so much re-litigation on the issue of the distribution of the estate and I put the parties on notice that Section 7 of the Civil Procedure Act on res-judicata is about to be invoked to close the doors for any beneficiary making attempts to re-open the proceedings under the guise of seeking justice.
18. Therefore, after careful examination of the competing claims by the parties, this Court observes that the fundamental challenge lies not in the legal principles governing estate distribution, but in the absence of a comprehensive and mutually agreed inventory of the deceased's estate. Questions arise regarding the true extent of commercial transactions, outstanding payments, and the net free estate available for distribution. These factual disputes, while legitimate, cannot be satisfactorily resolved by this Court through the review process, as they require detailed verification and agreement between the parties on the underlying facts.
19. The current disputes regarding individual allocations, outstanding balances, and estate liabilities suggest that the parties are operating from different understandings of what constitutes the free estate available for distribution. Rather than engaging in a piecemeal review of individual allocations based on contested facts, the more prudent and effective approach would be for the parties through the administrators to sit and establish a clear, agreed foundation for distribution.
20. Accordingly, this Court directs that the parties, being the administrators of the estate, shall within thirty (30) days from the date of this ruling, jointly prepare and file a comprehensive inventory of the estate of the late William Kiptanui Chepkwony. This inventory shall clearly identify:
 - a. All properties definitively established as belonging to the deceased at the time of death.
 - b. All verified liabilities of the estate with supporting documentation;
 - c. The net free estate available for distribution after accounting for liabilities and administrative expenses.
21. The inventory shall be jointly signed by all administrators and accompanied by an affidavit confirming its accuracy and completeness. Status Conference shall be held on the 8.7.2025.
22. It is so ordered.



DELIVERED VIE E-MAIL DATED AND SIGNED AT ELDORET ON THIS 18TH DAY OF JUNE 2025.

.....

R. NYAKUNDI

JUDGE

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