



**In re Estate of John Kiptoo Keino (Deceased) (Probate & Administration  
65 of 2021) [2025] KEHC 10868 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10868 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPSABET  
PROBATE & ADMINISTRATION 65 OF 2021**

**JR KARANJA, J**

**JULY 24, 2025**

**IN THE MATTER OF THE ESTATE OF JOHN KIPTOO KEINO:.....(DECEASED)**

**BETWEEN**

**DAVID KIPKEMEI SANGA ..... OBJECTOR**

**AND**

**ANNAH JELIMO KEINO ..... 1<sup>ST</sup> PETITIONER**

**EVERLYNE JEPCHIRCHIR ..... 2<sup>ND</sup> PETITIONER**

**RULING**

1. Vide an order of the court made on 14<sup>th</sup> August 2019, a grant for letters of administration intestate respecting the estate of the Late John Kiptoo Keino [deceased] was made in favour of the two Petitioners, Annah Jelimo Keino and Evaline Jepchirchir in their respective capacity as widow and eldest daughter of the deceased.
2. The estate property comprised a parcel of land described as No. Nandi/Eisero/262, which upon confirmation of the grant on the 27<sup>th</sup> September 2021 was shared to the First Petitioner in trust for the Second Petitioner and her siblings, Sophia, Viola, Gladys, Manasses and Faith, and to one Karen Jerop. Whereas, the First Petitioner's shares comprised of fourteen [14] acres of the property, the share allocated to Karen Jerop was one [1] acre, thereby implying that the entire estate measured fifteen [15] acres.
3. The search certificate dated 28<sup>th</sup> November 2003 obtained from the Land Registrar and included as a support document in the petition for letters of administration intestate dated 18<sup>th</sup> October 2004, indicated that the estate property measured six decimal two [6.2] hectares and was solely owned by the deceased as the registered owner from the 9<sup>th</sup> February 1984.



4. The chief's letter dated 18<sup>th</sup> October 2004, showed that the deceased was survived by the First Petitioner as his sole widow and six [6] children inclusive of the Second Petitioner as the Eldest child/ daughter from among four other daughters and one son. These were the identified beneficiaries of the estate, hence included as such in the certificate of confirmation of grant dated 27<sup>th</sup> September 2021, in addition to the person known as Karen Jerop who was not included as a beneficiary in the first instance.
5. Interestingly, a second chief's letter dated 17<sup>th</sup> November 2014 indicated that the deceased was survived by two widows, six children and a brother called David Kipkemei Sanga, whose position for the purposes of the petition for grant was taken over by his son Joel Kiplagat Kemei. However, in a court judgment delivered on 18<sup>th</sup> December 2015, the First Petitioner was confirmed to be the sole lawful wife of the deceased. The alleged first wife, Salome Chebochami Keino, was found not be a wife of the deceased at all.
6. The judgment paved the way for the issuance of the material grant of letters of administration intestate on the 14<sup>th</sup> August 2019, in favour of the two Petitioners and its subsequent confirmation on 27<sup>th</sup> September 2021.

An application dated 25<sup>th</sup> October 2021 made by the Objector for revocation of the grant, more so revocation of the certificate of confirmation of grant dated 27<sup>th</sup> September 2021, was dismissed by this court in a ruling delivered on 17<sup>th</sup> July 2024.

7. The present application dated 29<sup>th</sup> July 2024 is for review of the ruling and is now made by David Kipkemei Sanga as the Objector/ Applicant and not by his son, Joel Kiplagat Kemei who was the actual Objector in the dismissed application for revocation of the grant dated 25<sup>th</sup> October 2021.

The grounds for the application are contained in the Notice of Motion dated 29<sup>th</sup> July 2024 and are augmented by the Applicant's averments in the supporting affidavit dated 29<sup>th</sup> July 2024.

8. The Petitioners/ Respondents opposed the application on the basis of the averments and grounds contained in their replying affidavit dated 28<sup>th</sup> February 2025 and their written submissions dated 9<sup>th</sup> June 2025. The Applicant placed full reliance on his supporting affidavit and did not therefore file written submissions.

9. In due consideration of the application on the basis of the supporting grounds and those in opposition thereto as reflected in the supporting and replying affidavits as well as the Respondent's submissions, it was clear to this court that the basic issue for determination was whether the Applicant provided satisfactory grounds for review of the impugned ruling in terms of Order 45 of the Civil Procedure Rules.

10. Order 45 of the Civil Procedure Rules is among the provisions of the Civil Procedure Act and Rules imported into the Law of Succession Act by dint of Rule 63 of the Probate and Administration Rules.

It provides under Rule 1[1] for review of decrees or orders where an appeal is allowed but has not been preferred and on grounds of discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the Applicant or could not be produced by him at the time when the decree was passed or the order made.

11. Additionally, a review may occur on account of some mistake or error apparent on the face of the record or for any other sufficient reason.

The guiding principles for review applications were enunciated by the Supreme Court in the case of Parliamentary Service Commission v Martin Nyaga Wambora and Others Application NO. 8 of 2017 as follows: -



- “[i] A review of exercise of discretion is not as a matter of course to be undertaken in all decisions taken by a limited bench of this court.
- (ii) Review of exercise of discretion is not a right but an equitable remedy which calls for a basis to be taken by the Applicant to the satisfaction of the court.
- (iii) An application for review of exercise of discretion is not an appeal or a chance for the Applicant to re-argue his/ her application.
- (iv) 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;
- (v) 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.
- (vi) The Applicant has to satisfactorily demonstrate that the judge[s] misdirected themselves in exercise of discretion and: -
- (a) As a result a wrong decision was arrived at or
- (b) It is manifest from the decision as a whole that the judge has been clearly wrong and as a result there has been an apparent injustice.”
12. As for the Court of Appeal in respect of application for review it stated in the case of [National Bank of Kenya v Ndungu Njau](#) [1997] eKLR that: -
- “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 sufficient grounds 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.”
13. Basically, a court can review its decision on either of the grounds enumerated in Order 45 Rule 1 of the [Civil Procedure Rules](#) and not otherwise.
- Any other sufficient reason as appears in the provision has to be considered in the light of other specified grounds. The present application in as much as it is based on alleged discovery of new and important matter or evidence which was not within the knowledge of the Applicant or could not be produced by him at the time when the impugned decision was made and in as much as the Applicant appears to delve into the merits of the impugned decision by way of review rather than appeal, runs afoul of the principles hereinabove set by the Supreme Court and the Court of Appeal.
14. In particular, the Applicant does not provide a basis to the satisfaction of this court for exercise of discretion in his favour by reviewing its impugned decision. The alleged fresh evidence is in fact not anything new as it was raised and considered before the impugned decision was made. Further, the Applicant’s grounds and arguments points towards an appeal disguised as an application for review or a chance for him to re-argue the application subject of the impugned decision.
15. In any event, a mere discovery of new or important matter or evidence is not sufficient ground for review if the Applicant does not show to the satisfaction of the court that such new matter or evidence



was not within his knowledge even after exercise of due diligence and that it could not be availed in court much earlier.

16. In sum, the Applicant has failed to provide a basis and satisfactory grounds for review of this court's decision made on the 17<sup>th</sup> July 2024. As such, the present application is hereby dismissed with costs to the Petitioners/ Respondents.

**DELIVERED AND DATED THIS 24<sup>TH</sup> DAY OF JULY 2025**

**J. R. KARANJAH,**

**JUDGE**

