



REPUBLIC OF KENYA



In re Estate of Francis Mugambi Mungori M'Imanene (Deceased) (Succession Cause E026 of 2021) [2025] KEHC 10950 (KLR) (23 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10950 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE E026 OF 2021**

SM GITHINJI, J

JULY 23, 2025

**IN THE MATTER OF THE ESTATE OF FRANCIS
MUGAMBI MUNGORI M'IMANENE (DECEASED)**

BETWEEN

LAWRENCE KEVIN KINOTI APPLICANT

AND

SUSAN NKIROTE KABURU 1ST RESPONDENT

JENNIFER KARIMI ANGANE 2ND RESPONDENT

JOY NKIROTE KOOME 3RD RESPONDENT

GRACE KAGWIRIA MUNGORI 4TH RESPONDENT

RULING

1. For determination is the Notice of Motion dated 14/2/2024 pursuant to Order 45 of the Civil Procedure Rules and Rules 49, 59 (1), (6) and 73 of the Probate and Administration Rules, seeking that:
 1. Spent
 2. This Honorable court be pleased to review and/or vary its orders issued on 30th November 2023.
 3. Costs of this application be provided for.
2. The application is premised on the grounds on the face of it and the supporting affidavit of Lawrence Kevin Kinoti, Applicant herein sworn on even date. He faulted the court for failing to consider his submissions which were duly filed on 5/6/2023 and served upon the Respondents on 6/6/2023. He



- further faulted the court for failing to factor in material facts that the Respondents had concealed in the petition for letters of Administration Intestate, which was an omission and a miscalculation.
3. The application was not responded to.
 4. The Applicant filed a Notice of Preliminary Objection dated 14/2/2024 on the grounds that;
 1. The First and Second Respondents have no locus standi as administrators of Estate herein without first petitioning for grant of letters of Administration ad litem.
 2. The Fourth Respondent's interest in Estate of the Deceased are not represented as legal requirement Under Section 56 (1) (9a) of the [Law of Succession Act](#) and Pursuant to Order 32 of the Civil Procedure Rules 2010.
 3. The application in petitioning of Letters of Administration, the Applicant's mother was fraudulently made a surety against the Rules of Intestacy Rule 29 (8) (e).
 4. The First, Second and Third Respondents are intermeddling with the Estate of the Deceased without first obtaining the grant of Letters ad colligenda bona and of which is contrary to section 45 of the [Law of Succession Act](#).
 5. The Applicant swore an Affidavit of Protest on 11/12/2023, vehemently protesting to the summons for confirmation of grant dated 27/7/2022. He insisted that the 2nd Respondent was not his mother and she would thus not take care of his interest in the estate of his father, James Kimathi. He urged the court to disregard the Respondents' proposal which, according to him, was inequitable, discriminatory and unfair.
 6. The application and the Preliminary Objection were canvassed by way of written submissions which were duly filed by counsel.
 7. The Applicant through the firm of Kinoti D.M & Co. Advocates filed submissions dated 28/2/2025. Counsel submitted that the deliberate, deceptive and blatant omission of the Applicant and his biological mother in the probate proceedings explicitly warrants grant of the orders sought, and cited In re Estate of James Ngengi Muigai (Deceased) (Succession Cause 523 of 1996) [2022] KEHC 11206 (KLR) (13 May 2022) (Ruling), In re Estate of Imoli Luhitse Paul (Deceased) [2021] KEHC 1389 (KLR), In re Estate of Ezekiel Mabeya Kegoro (Deceased) [2019] KEHC 10003 (KLR), In re Estate of Stephen Kimotho Karanja (Deceased) [2022] KEHC 26965 (KLR), Eddah Wangu & another v Sacilia Magwi Kivuti (Deceased) Substituted with Ribereta Ngai [2021] KEHC 1142 (KLR) and Cleopa Amutala Namayi v Judith Were (2015) KEHC 6000 (KLR). Counsel contended that the cause was improperly before the court because the 1st and 2nd Respondents did not have locus standi, and cited Edima and 2 others v Edima and 5 others Misc Succession Cause E001 of 2022 (2022) KEHC 9960 (KLR) 6th July 2022 (Ruling), John Merete Kirema & Another v Gladys Karimi M'Muthamia & 3 others [2013] KEHC 4163 (KLR), Veronica Njoki Wakagota (Deceased) (2013) eKLR, Owners of the Motor Vessel "Lilian "S" v Caltex Oil (Kenya) Limited (Kenya) Ltd [1989] KECA 48 (KLR) and Mukisa Biscuits Manufacturers Limited v Westend Distributors Ltd (1969) EA 696.
 8. The Respondents through the firm of G.M Wanjohi, Mutuma & Co. Advocates filed submissions dated 19/11/2024 citing Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696 on what constitutes a preliminary objection. Counsel contended that the 1st and 2nd Respondents had locus standi to administer the estate, and cited Winrose Emmah Ndinda Kiamba v Agnes Nthambi Kasyoka (2021) eKLR, Counsel cited Kyule v Gitaari (Civil Appeal 217 of 2023) [2024] KEHC 5819 (KLR) (23 May 2024) (Ruling) where the court stated that; "The preliminary objection has raised numerous matters of facts which are outside the ambit of a preliminary objection. This court disregards



all the said matters of facts for being irrelevant.” Counsel cited *Republic v Public Procurement Administrative Review Board & 2 others* (2018) eKLR, on the scope for review.

Disposition

9. Having considered the application, the Preliminary Objection, the responses thereto, the submissions by counsel and the authorities relied on, I find the issue for determination to be whether they are merited.
10. A court can only review its decision upon proof of any of the conditions listed under Order 45 of the Civil Procedure Rules as follows; “i. That there is discovery of new and important evidence which was not available to the applicant when the judgment or order was passed despite having exercised due diligence; or ii. That there was a mistake or error apparent on the face of the record; or iii. That sufficient reasons exist to warrant the review sought. In addition to proving the existence of the above grounds, the applicant must also demonstrate that the application was filed without unreasonable delay.”
11. The Applicant’s quest for review is predicated on the court’s omission and miscalculation of the facts on record.
12. I find that misapprehension of the evidence on record is not a ground for review under section 45 of the Civil Procedure Rules. It must be understood that there can be no review from a wrong conclusion of law.
13. The Applicant’s application, though disguised as one for review is essentially a back door attempt of asking the court to sit on appeal of its own decision, which is unconscionable.
14. In *National Bank of Kenya Limited v Ndungu Njau* [1997] eKLR, the Court of Appeal distinguished review from appeal as follows; “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 a sufficient ground 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. Misconstruing a statute or other provision of law cannot be a ground for review.”
15. I find that the question whether the 2nd Respondent possesses the requisite locus standi was exhaustive determined by the court in the ruling sought to be reviewed, and cannot be relitigated under the misconstrued pretext of review.
16. The court is accused of failing to consider the Applicant’s submissions, which were allegedly filed on 5/6/2023. The question that begs is whether the consideration and/or lack thereof of a party’s submissions in itself, is one of the grounds under which review is permissible. I have taken the liberty to peruse the record together with the Court Tracking System, and indeed confirm that the Applicant did not file any submissions. How then can he fault the court for failing to consider the submissions which were not on record? I am dissuaded that the court would have reached a different conclusion even upon consideration of the Applicant’s submissions, if filed, because submissions are merely a guide and can never take the place of pleadings and evidence.
17. What constitutes a Preliminary Objection has been defined in the locus classicus case of *Mukisa Biscuit Company v Westend Distributor Limited* (1969) EA 696 as follows; “A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”



18. I find that the Preliminary Objection, as raised, is grounded on numerous facts which need to be ascertained, and it has therefore not attained the threshold of a pure preliminary point of law, which is capable of disposing the entire matter without the need to go to trial.
19. I find that it would be pre-emptive and premature to determine the Protest at this interlocutory stage, when directions on the hearing of the summons for confirmation of grant have not been taken.
20. For the reasons set out above, the Applicant's application and the Preliminary Objection dated 14/2/2024 are in want of merit and they are hereby dismissed.
21. The Protest shall be determined during the hearing of the summons for confirmation of grant.

DATED AND DELIVERED AT MERU THIS 23RD JULY, 2025

S.M. GITHINJI

JUDGE

Appearances:-

Mr. Kinoti for the Applicant (absent).

Mr. Mutuma for the Respondent (absent).

They both be notified.

S.M. GITHINJI

JUDGE

23/7/2025

Court: Mention on 29/10/2025 for further directions.

S.M. GITHINJI

JUDGE

23/7/2025

