



**In re Estate of the Late Jeremiah wairegi Kugwa (Probate & Administration
43 of 1994) [2025] KEHC 10199 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10199 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PROBATE & ADMINISTRATION 43 OF 1994
RN NYAKUNDI, J
JULY 15, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE JEREMIAH WAIREGI KUGWA

BETWEEN

GEORGE KARANJA WAIREGI APPLICANT

AND

GRACE WAITHERA WAIREGI 1ST PETITIONER

PETER AMOS KIBOBO WAIREGI 2ND PETITIONER

ELIZABETH MWENDWA WAIREGI 3RD PETITIONER

GEORGE KARANJA WAIREGI 4TH PETITIONER

RULING

1. What is pending before this court for determination is the 4th Petitioner's summons dated 26th March, 2025 expressed under the provisions of section 47 and 74 of the *Law of Succession Act* and Rule 63 and 73 of the Probate and Administration Rules, section 1A, 3, 3A, 63€ and 80 of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules. The applicant seeks orders as follows:
 - a. Spent.
 - b. That the honorable court be pleased to review and set aside the orders of the ruling of the court delivered on 9th August 2024.
 - c. That pending the hearing of this application inter parties the honorable court be pleased to arrest the proceedings of that application 5th December 2024 and thereafter pending the hearing and determination of this cause.
 - d. The cost of this application be provided for.



2. The application is anchored on an affidavit sworn by George Karanja Wairegi together with grounds enumerated as follows:
 - a. That there is discovery of new and important evidence that the Applicant and his late brother were not provided for by their late father prior his death nor after his death.
 - b. That there is some mistake or error apparent on the face of the record.
 - c. That there is sufficient reason to obtain a review of the orders of the ruling dated 9th August 2024.
 - d. That the applicant shall be disinherited if the orders are not set aside.
3. For context, the relevant averments from the supporting affidavit are set forth below:
 - a. That I am biological child of the late Jeremiah Wairegi Kugwa and hence beneficiary of the Estate as per section 29 of the Law of Succession Act in equal degree with the Respondents who are also my biological siblings.
 - b. That the Respondents herein had filed an application dated 19th November, 2018 seeking to be appointed as Administrators in place of our late Brother Obadiah Njore Wairegi Deceased and upon being appointed be at liberty to apply for distribution of this Estate.
 - c. That they also to have that parcel of land known as Plot No. 15/1/Huruma 9UPN 50330 be included as part of this Estate.
 - d. That I responded to the said application via replying affidavit which I deposed on the 11th December, 2019.
 - e. That the Court heard the application and a Ruling was delivered by Justice S.M Githinji on the 27th September, 2021 where he found that I had purchased that parcel of land known as PLOT NO. 15/1/HURUMA 9UPN 50330 from our late Mother and the same did not form part of our Fathers Estate.
 - f. That the Respondents did not file an appeal nor an application for review to set aside the said Ruling by Justice Githinji.
 - g. That it will be incorrect to say that I and my late brother had benefited from this Estate with respect to the above parcel of land.
 - h. That the mode of distribution that was proposed by the Respondent herein included parcel No. Plot No. 15/1/huruma 9UPN 50330 which the same was to be distributed to my late Brother and I.
 - i. That we did not agree with the said mode of distribution because whatever we were being given was not part of the Estate of our late father.
 - j. That the Honourable Court directed parties to file their proposed mode of distribution which parties did.
 - k. That upon the parties filing their mode of distribution the Honourable court was to deliver its Ruling on the 17th June, 2024.
 - l. That on the said date the Ruling was not ready and the Court directed that the same was to be delivered on notice.



- m. That we have since learnt that the Honourable court proceeded to deliver the Ruling on the 9th August, 2024 without giving my counsel on record notice of delivery of the Ruling.
 - n. That the Honourable Judge Justice Nyakundi correctly observed that I did not sign on the consent on the mode of distribution but erroneously stated that the mode of distribution was not objected and proceeded to allow the mode of distribution proposed by the Respondents herein.
 - o. That there is an error on the face of the record that the mode of distribution as proposed by the Respondent was not opposed.
 - p. That the Honourable Court was not aware of the Ruling of the Court with respect to the ownership of the Huruma plot.
 - q. That based on the Ruling of 9th August, 2024 I have been disinherited together with my late brother who are also entitled to inherit from our late father.
4. In response to the application, the Respondents through Grace Waithera Wairegi swore a replying affidavit dated 2nd April, 2025 stating as follows:
- a. That on 9th August 2024, a ruling was delivered by Honourable Justice Reuben Nyakundi in favour of the applicants and other beneficiaries of the estate of the late Jeremiah Wairegi Kugwa.
 - b. That in the said ruling the court ordered that the state be divided in terms of the mode of distribution proposed in the affidavit sworn by Grace Waithera Wairegi, the 1st petitioner/ applicant dated 27th May 2024.
 - c. That the proposed mode of distribution was based on the genuine knowledge and understanding that the 4th petitioner/ applicant and the late Obadiah Njoroge Wairegi had benefited from land parcels known as Kiplombe/Kuinet Block 2(Rotich and Birech)/5 measuring approximately 7.17 hectares and block 15/1/Huruma plot no. 9UPN.50330 both forming part of the estate of the deceased without the consent and involvement of the other beneficiaries of the deceased.
 - d. That the applicant avers that the land parcel Block 15/1/Huruma plot no. 9UPN.50330 did not form part of the estate as he had purchased the said parcel of land from our late mother Sarah Ruguru Wairegi, is false, malicious and mischievous as the applicant is intent on micro-managing our shares of estate while he reserves the majority share of the estate for himself.
 - e. That the Applicant avers that vide a proposed mode of distribution dated 21st January 2019, the beneficiaries of the deceased included the land parcels Kiplombe/Kuinet Block 2 (Rotich and Birech)/5 and Block 15/1/Huruma Plot No. 9UPN.50330 as assets of the deceased based on the genuine belief and knowledge that the parcels of land still formed part of the estate of the deceased.
 - f. That it was only then that the beneficiaries of the estate were informed that the aforementioned parcels of land had already been transferred and no longer formed part of the estate. In addition, the aforementioned parcels of land were transferred without the consent of the other beneficiaries resulting in unjust enrichment of the Applicant and the Late Obadiah Njoroge Wairegi



- g. That as a result of the mischievous and malicious transactions and transfers of the estate of the deceased by the Applicant and the Late Obadiah Njoroge Wairegi, the Respondents and the beneficiaries of the estate proposed the mode of distribution as follows: -
- i. Eldoret Municipality Block 5/486 measuring 0.0488 HA to:
 - a. Mary Wamboi Wairegi
 - b. Florence Nyambura Wairegi.
 - c. Margaret Wangare Wairegi.
 - d. Elizabeth Mwendwa Wairegi,
 - e. Grace Waithera Wairegi.
 - ii. Chania/Maatara/892 measuring approximately 2.45 HA to: -
 - a. Esther Kabura Wairegi.
 - b. Peter Amos Kibobo Wairegi.
 - c. Samuel Mbugua Wairegi
- h. That the Applicant did not consent to our mode of distribution and he did not object to our mode of distribution a fact which was taken into consideration by this Honourable Court in the ruling delivered on 9th August 2024.
- i. That the averment by the Applicant that Justice Reuben Nyakundi erroneously stated that the mode of distribution was not objected and proceeded to allow the mode of distribution proposed by the Respondents is malicious and mischievous as the Applicant did not object the said mode of distribution neither did he bring to the court's attention that he was not satisfied with our proposed mode of distribution.
- j. That I am advised by my advocate on record which information I believe to be verily true that Order 45 of the Civil Procedure Rules 2010 provides that an order can be reviewed by the court on three (3) general grounds-error on the face of the record, discovery of new and important evidence that was not available at the time the order was made and any other sufficient reason.
- k. That I am further advised by my advocate on record which information I believe to be true that an error is essentially a mistake but where the full name of a person is omitted, it would be stretching the meaning of the word "error" too far to say that that would amount to the error or mistake envisaged.
- l. That I am further advised by my advocate on record which information I believe to be true that the Applicant's averments that there is an error on the face of the record that the mode of distribution as proposed by the Respondent was not opposed does not amount to an error or mistake as envisaged.
- m. I am further advised by my advocate on record which information I believe to be true that unless an objection and/or opposition is raised with regard to a subject matter in a suit it is not the duty of the Honourable Court to draw inferences as to the intention of parties in the matter. As such, the Applicant did not explicitly contest or object the said mode of distribution by the Respondents to justify review of the ruling dated 9th August 2024.



- n. That I have had occasion to carefully peruse and look through the affidavit sworn in support of the application and I have noted that the Applicant has not made any effort to identify any error on the face of the record, or at any rate to demonstrate that there was an error on the face of the record. In addition, the Applicant has not attempted to show that there has been discovery of an important matter of evidence that was not available on 9th August 2024 when the ruling was delivered to warrant a review. Nor was any effort made by the Applicant to demonstrate that there was another sufficient reason for the review of the subject order.
 - o. That before the Applicant filed this instant application for review, the Respondents and beneficiaries were already aggrieved and had filed an application dated 5th December 2024 based on the grounds that the Applicant had refused to execute the documents in favour of the Respondents and beneficiaries of the Late Jeremiah Wairegi Kugwa. As such, this application is an afterthought with the intention of micro-managing the beneficiaries' share of the estate and subsequently denying the beneficiaries of the deceased their rightful share of the estate. Furthermore, the application lacks merit as no valid grounds warranting the review of the ruling delivered by this Honourable Court on 9th August 2024 have been given.
5. The applicant in further response filed a supplementary affidavit in which he deposed as follows:
- a. That I was never served with the application dated 16th April, 2024 nor my previous Advocates or my current Advocates were served with that application and we have since confirmed at the online platform (cts) and in the physical Court file that there was no affidavit of service confirming service of that application.
 - b. That in the Ruling dated 27th September, 2021 Honourable Justice S.M Githinji indeed found out that parcel of land known as Kiplombe/Kuinet Block 2(Rotich & Bikrech) 5 had been sold by the parties herein mother to Hon. Justice Francis Tuiyott.
 - c. That Honourable Justice S.M Githinji also stated that, that parcel of land known as Plot No. 15/1/Huruma 9UPNS 0330 did not form part of the Estate as it had been sold to the Applicant and his late Brother by their Mother.
 - d. That finally Honourable Justice Githinji directed that properties whose titles are not in the name of the Deceased can properly be determined by the Environment and land Court and indeed he stated that the Applicant may have as well been overtaken by events as there was no clear estate remaining for distribution.
 - e. That the Respondents have never appealed that Ruling dated 27th September, 2021 and for them to say that I had already benefited from my father's Estate is lie under oath hence the same amounts to purgery.
 - f. That based on a lie by the Respondent my late Brother Obadiah Njore Wairegi and I have been disinherited at the expense of the Respondents.
6. The parties equally filed rival submissions, which I have highlighted as hereunder:

Applicant's submissions

7. Learned Counsel Mr. Mathai commenced his submissions by providing the factual and procedural background to the application. Learned Counsel provided context by explaining that the Honourable Court on 9th August, 2024 made a ruling confirming the Grant of Probate or letters of Administration dated 16th April, 2024 and ordered that the Estate be divided in terms of the mode of distribution



proposed in the affidavit sworn by Grace Waithera Wairegi, the 1st Petitioner/Applicant. That the Court had noted that the 1st Petitioner's proposed mode of distribution was opposed by the 4th Petitioner through an affidavit dated 7th June, 2024 sworn by George Karanja Wairegi.

8. It is submitted for the applicant that the 4th Petitioner has established the first limb of discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge and could not be produced by him at the time when the decree was passed or order made.
9. Learned Counsel contended that the 4th Petitioner was not aware of the existence of the application dated 16th April, 2024, as he was never served with it nor given an opportunity to execute it before it was filed in court. It is further submitted that the 4th Petitioner only became aware of the application when he was served with an application dated 5th December, 2024 by the 1st to 3rd Petitioners seeking orders that the Deputy Registrar execute transfer by transmission forms on behalf of certain land parcels.
10. It is submitted for the applicant that there exists an error or mistake apparent on the face of the record. Learned Counsel highlighted two specific errors:
11. That the Honourable Court stated in paragraph 7 of the Ruling that "I have gone through the record and none has objected to the consent to confirmation of the said grant." It is contended that this finding was erroneous as the 4th Petitioner was not served with the application and therefore could not respond or oppose it, whereas the Court's statement suggests the 4th Petitioner deliberately chose not to respond.
12. Secondly, That the 1st to 3rd Petitioners in their Replying affidavit stated that the 4th Petitioner and their late brother Obadiah Njore Wairegi had benefited from land parcels known as Kiplombe/kuinet Block 2 (Rotich And Birgen)/5 measuring approximately 7.17 Hectares and Block 15/1/Huruma Plot No. 9UPN. 50330. However, it is submitted that this was factually incorrect as these properties had already been determined not to form part of the Estate in a previous Ruling delivered by Honourable Justice S.M Githinji on 27th September, 2021.
13. Learned Counsel cited various authorities in support of his arguments including:
 - a. Republic v Public Procurement Administrative Review Board & 2 others [2018] Eklr.
 - b. Ajit Kumar Rath vs State of Orisa & Others, 9 Supreme Court Cases 596 at Page 608.
 - c. Tokesi Mambili and others Vs Simion Litsanga.
 - d. In Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR High Court of Kenya Nairobi Judicial Review Division Misc. Application No. 317 of 2018.
 - e. Sarder Mohamed v. Charan Singh Nand Sing and Another (1959) EA 793.
14. Mr. Mathai concluded by submitting that the 4th Petitioner has met the required threshold for granting orders of review. Learned Counsel prayed that the application be allowed since the 4th Petitioner has been disinherited together with the Estate of his late Brother Obadiah Njore Wairegi, contrary to law and natural justice.

Respondents' submissions

15. It is submitted for the Respondents that the gravamen of the application by the Applicant is that in the ruling delivered on 9th August 2024, the Honourable Court noted that the Applicant did not consent to the Respondents' proposed mode of distribution but proceeded to allow the proposed mode of distribution on the ground that there was no objection to the proposed mode of distribution.



16. Learned Counsel argued that the Applicant was duly served with the proposed mode of distribution by the Respondents. That the Applicant did not object the proposed mode of distribution and he did not give any tangible reasons as to why the estate of the Late Jeremiah Wairegi should not be distributed as agreed by the other beneficiaries before the ruling was delivered. He did not file any affidavit of protest to the summons for confirmation of grant.
17. It is submitted for the Respondents that the fact that the Applicant and the Late Obadiah Njoroge Wairegi were not provided for by the deceased in his lifetime and in the Respondents' proposed mode of distribution was well within the knowledge of the Applicant before the delivery of the ruling dated 9th August 2022.
18. Therefore, Learned Counsel argued that the allegation by the Applicant that there is a discovery of new and important evidence that the Applicant and his late brother were not provided for in the estate of the Late Jeremiah Wairegi Kugwa is false and mischievous as all facts regarding the estate of the Late Jeremiah Wairegi Kugwa were well within the knowledge of the Applicant.
19. It is submitted for the Respondents that this instant application has been filed after an inordinate delay of 7 months as an afterthought with the sole intention of frustrating the execution of the ruling dated 9th August 2024 in favour of the Respondents.
20. Learned Counsel noted that this application was filed on 26th March 2025, the same day the Respondents' application dated 5th December 2024 seeking execution of the transfer forms by the Deputy Registrar was coming up for mention to fix a date for ruling. It is submitted that pursuant to Order 45 rule 1(b) of the Civil Procedure Rules, an application for review is to be filed without unreasonable delay.
21. Learned Counsel argued that the issues raised by the Applicant in the instant application are grounds for appeal and not review as the Applicant is seeking to appeal the ruling dated 9th August 2024 in the guise of an application for review.
22. It is submitted for the Respondents that this instant application lacks merit as the Applicant is seeking to re-litigate his interests in the estate of the Late Jeremiah Wairegi Kugwa by raising facts which were well within his knowledge but he chose not to raise them vide an objection of the Respondents' mode of distribution before the ruling on 9th August 2024.
23. Learned Counsel submitted that the Applicant has not provided any sufficient reasons to warrant a review of the ruling delivered on 9th August 2024. In the instant application, the Applicant has not raised any reasonable or logical grounds to warrant a review of the ruling. That on the contrary, the Applicant is seeking to re-litigate his case in the guise of review as he is not satisfied with the ruling of the Honourable Court delivered on 9th August 2024. He urged the court to find the application without merit and dismiss the same.

Analysis and determination

24. Rule 63 of the Probate and Administration Rules specifically incorporates the provisions of Order 45 of the Civil Procedure Rules as applicable to succession proceedings. It provides that:

“Save as in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), ... shall apply so far as relevant to proceedings under these Rules.”



25. In *John Mundia Njoroge & 9 Others vs. Cecilia Muthoni Njoroge & Another* [2016] eKLR, the court cited Rule 63 of the Probate and Administration Rules, and then stated as follows:

“As stated above, the only provisions of the Civil Procedure Rules imported to the *Law of Succession Act* are orders dealing with service of summons, interrogatories, discoveries, inspection, consolidation of suits, summoning and attending witnesses, affidavits, review and computation of time. Clearly, Order 45 relating to review is one of the Civil Procedure Rules imported into succession practice by rule 63 of the Probate and Administration Rules. An application for review in succession proceedings can be brought by a party to the proceedings, a beneficiary to the estate or any interested party. However, the application must meet the substantive requirements of an application brought for review set out in Order 45 of the Civil Procedure Rules.”

26. The provisions of Order 45 of the Civil Procedure Rules dictate that a review can be allowed under the following circumstances:

“Discovery of new and important matter of evidence which, after 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.

Mistake or error apparent on the face of the record.

Any other sufficient reason which may make the court to review its order.”

27. In *National Bank of Kenya Ltd v Njau* [1995-1998] 2EA 249 (CAK); at page 253 of the judgment, the Court stated: -

“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.”

28. Similarly, in *Paul Mwaniki vs. National Hospital Insurance Fund Board of Management* [2020] eKLR, the court stated:

“... 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.”

The court further stated:

“37. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Act. Put it differently an order, decision, or judgment



cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

38. The wisdom flowing from jurisprudence on this subject is that no error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it.”
29. The foregoing cases demonstrate that for an error to be considered apparent on the face of the record, it must possess the quality of being immediately discernible without the need for elaborate argumentation or protracted analysis. Errors that necessitate detailed factual investigation or extensive legal reasoning, especially where reasonable minds might differ on the correct interpretation cannot satisfy this stringent test.
30. Even as I consider the merits of the application it is important to highlight that the primary duty of this court, as a succession court, is to identify the beneficiaries, ascertain the assets and ultimately distribute the deceased estate to the rightful beneficiaries. The court is assisted in that mandate by the parties who provide evidence as to who is a beneficiary and which are the assets and liabilities of the estate.
31. According to the Petition for Letters of Administration intestate, the deceased died intestate and left the following surviving him:
- a. Salah Ruguru Wairegi Widow (deceased)
 - b. Mary Wamboi Wairegi Daughter – Adult
 - c. Margaret Wangare Wairegi Daughter – Adult
 - d. Obadiah Njore Son – Deceased
 - e. George Karanja Wairegi Son – Adult
 - f. Florence Nyambura Wairegi Daughter – Adult
 - g. Esther Kabura Wairegi Daughter – Adult
 - h. Elizabeth Mwendwa Wairegi Daughter – Adult
 - i. Peter Kibobo Wairegi Son – Adult
 - j. Grace Waithera Wairegi Daughter – Adult
 - k. Samuel Mbugua Wairegi Son – Adult
32. The assets of the deceased have been identified as follows:
- a. Chania/Mataara/892 Measuring APPX. 2.45 HA.
 - b. Eldoret Municipality Block 5/486 Measuring Appx. 0.0488 HA
33. It is indeed a sad state of affairs that this succession matter, originally filed in 1994, has been marked by a number of irregularities and indolence on the part of various parties over the years. The protracted nature of these proceedings has unfortunately denied the rightful beneficiaries their inheritance for over three decades, a situation that calls for urgent intervention to bring this matter to its logical conclusion.



34. In the court's previous determination presided over by Justice Githinji on 27th September 2021, His Lordship highlighted that there were insufficient titles on record ascertaining the net estate of the deceased, leading to his finding that there was no clear estate remaining for distribution. However, the evidence now before this court demonstrates that the two properties identified in paragraph 32 above are indeed registered in the name of the deceased and form part of his estate.
35. While the parties ought to have brought comprehensive evidence of the estate assets at the outset of these proceedings, the passage of time and the presentation of proper title documentation now enable this court to proceed with the distribution of the identified estate assets.
36. Having carefully examined the evidence on record, it is clear that George Karanja Wairegi, being a biological son of the deceased, is entitled to share in the estate equally with his siblings in accordance with the provisions of the Law of Succession Act. His exclusion from the proposed distribution would constitute a manifest injustice that this court cannot countenance.
37. In the interest of justice and to bring finality to these protracted proceedings, I find it necessary to review the ruling dated 9th August 2024 and order a fresh distribution that includes all rightful beneficiaries of the deceased's estate.
38. Consequently, I make the following orders:
- a. The ruling delivered on 9th August 2024 is hereby reviewed and set aside.
 - b. The estate of the late Jeremiah Wairegi Kugwa comprising of Chania/Mataara/892 measuring approximately 2.45 HA and Eldoret Municipality Block 5/486 measuring approximately 0.0488 HA shall be distributed equally among all the surviving children of the deceased.
 - c. Each beneficiary shall be entitled to an equal share of the estate assets.
 - d. The parties shall take the necessary steps to effect the distribution as ordered herein within 90 days of this ruling.
 - e. Each party shall bear their own costs given the protracted nature of these proceedings.
39. Orders accordingly.

DATED SIGNED AND PUBLISHED VIA CTS AT ELDORET ON THIS 15TH DAY OF JULY 2025

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R. NYAKUNDI

JUDGE

