



REPUBLIC OF KENYA



**In re Estate of the Late Kirogo Njoroge (Deceased) (Succession Cause  
557 of 2015) [2025] KEHC 13596 (KLR) (30 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13596 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 557 OF 2015  
HI ONG'UDI, J  
SEPTEMBER 30, 2025**

**IN THE MATTER OF THE ESTATE OF THE LATE KIROGO NJOROGE (DECEASED)**

**BETWEEN**

**NYARUA KIROGO ..... 1<sup>ST</sup> ADMINISTRATOR  
MARIA WAMBUI KIROGO ..... 2<sup>ND</sup> ADMINISTRATOR**

**AND**

**JOHN WANYOIKE MBURU ..... 1<sup>ST</sup> RESPONDENT  
JIM MUNGE KINUTHIA ..... 2<sup>ND</sup> RESPONDENT  
WILLIAM NJUGUNA KINITI ..... 3<sup>RD</sup> RESPONDENT  
ESTHER WANJIRU MAINA (SUED AS THE ADMINISTRATOR OF THE  
ESTATE OF DAVID NJUGUNA KIROGO) ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**MARY WANGUI KINYANJUI ..... APPLICANT  
JANE WAIRIMU MBUGUA ..... APPLICANT  
ARERI MORAA VIVIAN ..... APPLICANT  
ELIZABETH OMWENGA ..... APPLICANT**

**RULING**

1. In the Notice of motion dated 18<sup>th</sup> February 2025 the applicant prays for the following orders;
  - i. Spent.



- ii. The Ruling of the Court delivered on 6<sup>th</sup> February 2025 be reviewed and / or varied and the court be pleased to set aside the following findings as contained in the Ruling and join the applicants to the suit: -
    - a. That the applicants in their own affidavits admitted that all the titles arising from the' subdivision of the property known as Kiambogo/Kiambogo Block 2/66 belonging to the deceased estate were cancelled; and
    - b. That this is not the right forum for the applicants to have their issues canvassed.
  - iii. The costs of the application be provided for.
2. The application is premised on the grounds on its face as well as the affidavit of the 1<sup>st</sup> applicant sworn on even date. She deponed that contrary to the findings by this court in the ruling dated 6<sup>th</sup> February 2025, they had never been issued with titles capable of cancellation. Further, that the property they were interested in was Kiambogo/Kiambogo Block 2/460 and the same had never been subjected to any form of litigation. She added that the plots in issue were bought directly from the administrator vide the Memorandum of understanding dated 5<sup>th</sup> October 2017. Thus, in the interest of justice the court ought to grant the orders sought to obviate the attendant of the applicants losing their interest as liabilities to the estate of the deceased person.
  3. The administrators in response filed a replying affidavit sworn on 21<sup>st</sup> March 2025 by the 1<sup>st</sup> administrator. She averred that the applicants' application was incompetent, bad in law and incurably defective since this court lacked the mandate and jurisdiction to determine questions arising therein. Further, that the said application relates to transactions arising after the demise of the deceased between the applicants and herself which do not relate to the estate herein. Thus, the issues arising therefrom cannot be resolved before this court.
  4. The applicants filed a lengthy further affidavit dated 25<sup>th</sup> March 2025 and sworn by the 1<sup>st</sup> applicant where she reiterated the contents of the affidavit in support of their application.
  5. The application was disposed of by way of written submissions. However, there are no submissions by the administrators in the court file or the CTS portal. The respondents on their part were not opposed to the application.
  6. The applicants' submissions were filed by Edam Associates Advocates and are dated 21<sup>st</sup> March 2025. Counsel gave a background of the case and identified one issue for determination which is whether or not the applicants have met the laid down legal criteria for review as was set out in Order 45 Rule 1 of the Civil Procedure Rules, 2010.
  7. Counsel submitted that the applicants had clearly demonstrated that there was error on the face of the record that required correction. She placed reliance section 80 of the *Civil Procedure Act* and the Supreme Court decision in Parliamentary Service Commission v Martim Nyaga Wambora & others [2018] eKLR where it quoted with approval the findings of the East Africa Court of Appeal in Mbogo and Another v Shah [1968] EA, upon establishing the following principles: -
    - “(31) Consequently, drawing from the case law above, particularly Mbogo and Another v Shah, we lay down the following as guiding principles for application(s) for review of a decision of the Court made in exercise of discretion 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 laid 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.
- iv. 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.
- v. The applicant has to satisfactorily demonstrate that the judges misdirected themselves in exercise discretion and:
  - a. as a result, a wrong decision was arrived at: or
  - b. it is manifest on the decision as a whole that the judge has been clearly wrong and as a result there had been an apparent injustice.

8. See also; National Bank of Kenya v Ndungu Njau, Civil Appeal No. 2111 of 1996.

9. Counsel urged the court to allow the applicants' application in the interest of justice and that the applicants be enjoined to the main cause as interested parties.

### **Analysis and Determination**

10. I have carefully considered the application, affidavits and the submissions by the applicants, I opine that the issue for determination by this court is whether the applicants have made out a case for review and setting aside of the ruling dated 6<sup>th</sup> February 2024.

11. The jurisdiction of this court for review of orders is provided for under Section 80 of the [Civil Procedure Act](#) which gives the court unfettered discretion to review its decision. Section 80 provides as follows: -

“Any person who considers himself aggrieved—

- a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.”



12. Further, Order 45 Rule 1 (1) of the Civil Procedure Rules, 2010 provides as follows:
- “(1) 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.”
13. Notably, Section 80 of the *Civil Procedure Act* gives the power of review whereas Order 45 sets out the rules which restricts the grounds for review to the following grounds:
- a. 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 or;
  - b. On account of some mistake or error apparent on the face of the record; or
  - c. For any other sufficient reason.
14. The grounds relied on by the applicants in their application is on account of some mistake or error apparent on the face of the record. The said errors are as follows;
- i. That the applicants in their own affidavits admitted that all the titles arising from the subdivision of the property known as Kiambogo/Kiambogo Block 2/66 belonging to the deceased estate were cancelled; and
  - ii. That this is not the right forum for the applicants to have their issues canvassed.
15. In *Nyamogo and Nyamogo Advocates Vs. Kago* (2001) 1EA 173, the Court of Appeal held as follows:
- “An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a merely erroneous decision and an error apparent on the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for review although it may be for an appeal.”
16. In light of the decision cited above, it is clear that a mistake or error on the face of the record must be one that stares one in the face, as it were, and on which there cannot be two opinions It is my



considered opinion that the issues raised in the applicants' application (see paragraph 14 herein above) to demonstrate the existence of mistakes or errors on the face of the record are highly contentious and there are two or more opinions on each of them. There is no doubt that the administrators opposed the said application and have a different opinion on the grounds raised by the applicants.

17. Additionally, in dismissing the applicants' application for joinder as interested parties, this court was duly guided by the principles of the law pertaining to the same. Thus, if the court misapplied the law thereby reaching an erroneous conclusion, in the opinion of the applicants, that cannot be corrected by an application for review but by an appeal.
18. For the reasons stated above, it is my finding that the applicants have not made out a case for review and setting aside of the ruling dated 6<sup>th</sup> February 2024.
19. Consequently, the applicants' application dated 18<sup>th</sup> February 2025 is dismissed with costs.
20. Orders accordingly.

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 30<sup>TH</sup> SEPTEMBER, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

