



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Samuel Mwangi Kabugi alias Mwangi Kabugi (Deceased) (Succession Cause 607 of 2013) [2025] KEHC 13247 (KLR) (Family) (26 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13247 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 607 OF 2013
PM NYAUNDI, J
SEPTEMBER 26, 2025
IN THE MATTER OF THE ESTATE OF SAMUEL MWANGI
KABUGI ALIAS MWANGI KABUGI (DECEASED)

RULING

Introduction

1. Vide Summons dated 18th July 2025 and presented under Article 40 and 159 of the *Constitution* of Kenya; Section 74 of the *Law of Succession Act* and Rule 43 of the *Probate and Administration Rules*, Peter Kamau Mwangi, Catherine Wangui and Isaac Muiruri; the Applicants seek the following orders:
 1. Spent
 2. Spent
 3. Spent
 4. That this Honourable Court be pleased to review, set aside and / or vary the orders issued on 18th July 2025 appointing Nancy Waithira Njoroge as sole administrator.
 5. That this Honourable Court be pleased to appoint Nancy Waithira Njoroge, Peter Kamau Mwangi, Catherine Wangui and Isaac Muiruri as Co- Administrators
 6. That pending the hearing and determination of this application, this Honorable court be pleased to issue the applicants with a copy of the mediation report submitted to court.
 7. That this Honourable Court be pleased to transfer this matter to the High Court in Thika for hearing and determination
 8. Costs of this application be provided for.



2. The Applicants are aggrieved by the orders of this court of 18th July 2025 appointing Nancy Waithira Njoroge as the Administrator. The basis of their application is that they were not involved in the process leading up to the appointment and they were not served with pleadings in the matter.
3. Further they contend that the current administrator is least suited to administer the Estate as she is hostile towards the other beneficiaries and the Estate is at risk of being wasted under her watch. She is described as being divisive and dictatorial, characteristics that do not augur well for her assigned role.
4. They are apprehensive that she will not consult them in the administration of the Estate. The applicants seek a copy of the mediation report so as to understand the circumstances under which this Court appointed her as an Administrator given that she is the one who frustrated the mediation on account of the hard stance she adopted.
5. The applicants also seek that the matter be transferred to the High Court at Thika and that they be appointed as Co- Administrators.
6. The Respondent did not file a response to the Application and no submissions have been filed by either party as directed.
7. Nonetheless the Court is obligated to consider the application on its merits. The substantive prayer within this application is the review of the Orders of 18th July 2025 appointing the respondent as sole administrator.
8. The principles to guide Courts in applications for review are set out under Order 45 of the [Civil Procedure Rules](#). The substantive provisions of Order 45, state 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.
9. Order 45 of the [Civil Procedure Rules](#) provides for three grounds upon which an order for review can be made. To be successful, the applicant must demonstrate to the court that there has been 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. A party may successfully apply for review, secondly, if he can demonstrate to the court that there has been some mistake or error apparent on the face of the record. The third ground for review is worded broadly: an application for review can be made for any other sufficient reason.
10. An error apparent on the face of the record was defined in [Batuk K. Vyas v Surat Municipality](#) AIR (1953) Bom 133 thus:

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...



11. The reasons given by the applicants in seeking the review of the Orders of 18th July 2025 do not fall within Order 45 of the Civil Procedure Rules. A review application must confine itself to the scope and ambit of Order 45 rule 1 lest it mutates into an appeal. A misdirection by a judicial officer on a matter of law cannot be said to be an error apparent on the face of the record.
12. The Applicants allege that they were not heard and that the Respondent is ill suited to act as administrator. A reread of the ruling of 18th July 2025 will show that the record does not support their averments.
13. In the case of *Nyamogo & Nyamogo Advocates v. Kago* [2001] 2 EA 173 the court pronounced itself thus:

.... There is a real distinction between a mere erroneous decision and an error apparent on the face of 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 a review although it may be for an appeal.
14. Having determined that the application for review must confine itself within the provisions of Order 45, I find that presenting the application under Article 40 (protection of right to property) and Article 159 (Obligation of Court to deliver Substantive Justice, avoid procedural technicalities and promote Alternative Dispute Resolution) along with Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules (Saving the inherent powers of the Court) does not absolve the applicants from this obligation.
15. I therefore find that the application for review is without merit. The Application seeks the transfer of the matter to the Thika Law Court on account of the territorial jurisdiction of that Court as the assets that comprise the estate are based in Thika and the beneficiaries to the Estate are all resident in Thika.
16. I take note that the matter is advanced and the applicants have not stated the prejudice that they will suffer if the matter proceeds to hearing. Accordingly, I decline to transfer the matter as in my view the applicants appear to be forum shopping. The deceased herein died on 24th August 2006, the Succession Cause was initiated in 2008, this means that the matter has been pending in Court for close to 17 years. We must plough forward, because at the end of the day, the day must end.
17. In the final analysis I dismiss the application in its entirety and direct that the Administrator having filed the summons for confirmation, the beneficiaries file their affidavits of Protest within 14 days. The Administrator is granted corresponding leave to file further affidavit within 7 days of service of the protests.
18. Matter will be mentioned on 4th November 2025 to confirm compliance and take further directions.
19. On account of the relationship between the parties, there shall be no order as to costs.
20. Parties at liberty to exercise right of appeal within 30 days.

It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 26th DAY OF SEPTEMBER, 2025.



P. M NYAUNDI

HIGH COURT JUDGE

In the presence of:

Fardosa Court Assistant

Koira for Administrators /Respondent

Kuria for Applicant

