



In re Estate of Peter Omondi Adoyo (Deceased) (Succession Cause 1043 of 2013) [2025] KEHC 14558 (KLR) (Family) (16 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14558 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

SUCCESSION CAUSE 1043 OF 2013

HK CHEMITEI, J

OCTOBER 16, 2025

IN THE MATTER OF THE ESTATE OF THE LATE PETER OMONDI ADOYO (DECEASED)

BETWEEN

VICTOR MWENDWA MWITHYA APPLICANT

AND

TRUPHOSA APONDI OMONDI 1ST RESPONDENT

JOHNSON MUTISO OMONDI 2ND RESPONDENT

AND

VICTOR MWENDWA MWITHYA INTERESTED PARTY

RULING

1. In his notice of motion dated 7th April 2025 the Applicant seeks the following prayers;
 - (a) This court be pleased to review, vary or set aside the orders issued on 3rd April 2025 and in particular the order voiding the sale of the property LR NO. 36/979/1 situate at Eastleigh and in substitution thereof find and hold that the Interested Party/Applicant herein was a bona fide purchaser of the suit property for value without any notice of fraud or illegality and the sale of the said property to him was lawful and valid.
2. The application is based on the grounds thereof and the Applicant’s sworn affidavit dated the same date.
3. The Applicant contend that this court failed to take into consideration his response to the application namely the replying affidavit as well as his written submissions.



4. In his replying affidavit dated 22nd April 2025 the 2nd Respondent deponed that the application was a sham as the court found that the valuation undertaken was not by a professional valuer.
5. The court has perused the entire application as well as the submissions on board.
6. The grounds for review have been clearly set out under order 45 rule 1 of the Civil Procedure rules, namely:
 - “ 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.”
7. I have perused the supporting affidavit by the Applicant and I do agree that the court was not privy of his response to the 2nd Respondent’s application at the time it delivered the ruling of 3rd April 2025.
8. Having seen the attached response however it does not in my view change the fact that the valuer Anthony Nzube who undertook the valuation exercise at the time was not licensed. The impugned ruling of 3rd April 2025 states as much.
9. Nevertheless, the disposition of the property was in line with the judgement of this court (Odero J) of 29th July 2022. It is as well evident that as a result of the said sale the entire conveyancing transaction was completed. The only hitch was the valuation exercise which this court found it wanting and that was the reason for voiding the entire exercise.
10. Considering the new evidence before me, in form of the affidavit which I was not able to see at the time I made the ruling I find the reasons by the Applicant seeking for review plausible and in line with order 45 of the Act (supra).
11. The court ideally would set aside the orders of 3rd April 2025 but in my view the parties will still find themselves in the same position before the above ruling. The best approach is to consider the orders given and incorporate the new evidence on board as submitted by the Applicant.
12. Considering the distance, the parties have reached in the conveyancing exercise it will not be efficacious to have the sale to the Applicant cancelled for now. The proper approach is to have a registered valuer and licensed valuer carry out fresh valuation taking into consideration the improvements if any done by the Applicant after the purchase and subsequent transfer to him. Whatever the difference the Applicant should organize and pay the same to the Administrators within 90 days thereafter.
13. The court takes cue that none of the parties including the Respondent or any other beneficiaries stand to lose as the valuation and sale had in any event been sanctioned by this court.
14. Consequently, the court directs that:
 - (a) The application is allowed and the ruling dated 3rd April 2025 is hereby amended to include:



- (i) A fresh valuation be undertaken within 45 days from the date herein by a registered and a licensed valuer to be agreed upon by the parties and in the event of any disagreement the Deputy Registrar of this court be at liberty to appoint one 14 days after a notice of such disagreement.
 - (ii) The amount, if any, of the difference between what the Applicant paid should be remitted to the Administrator for onward transmission to the beneficiaries within 90 days after the above valuation.
 - (iii) The costs of the valuation shall be shared out equally between the estate and the applicant/purchaser.
- (b) Costs in the cause.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 16TH DAY OF OCTOBER 2025.

H K CHEMITEI

JUDGE

