



**In re Estate of Nicholas Kiptoo Bomett (Deceased) (Succession Cause 585 of 2009) [2025] KEHC 14284 (KLR) (9 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14284 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
SUCCESSION CAUSE 585 OF 2009  
SM MOHOCHI, J  
OCTOBER 9, 2025  
IN THE MATTER OF THE ESTATE OF THE LATE  
NICHOLAS KIPTOO BOMETT (DECEASED)**

**BETWEEN**

**ANDREW K BOMETT ..... APPLICANT**

**AND**

**SAMIR BADYOPADHYAY KUMAR ..... OBJECTOR**

**RULING**

1. The Petitioner, who is acting in person, once more moves this Court in his application for review and setting aside the ruling dated 9th May 2025.
2. I further note that the Applicant subsequent to this Application further amended the same without leave of the Court and as such before me I have two applications. The first one being undated and the one dated 10th June 2025.
3. In the interests of justice this Court has considered both motions without prejudice.
4. The Applicant seeks the Court to review and set-aside its ruling delivered on 9<sup>th</sup> May 2025, on the basis of Succession 162/2011 at the High Court of Kitale which contradicts Succession 585/2009 with a distribution of 50/50 based on the same estate, already proving that double succession occurred in different Court under different jurisdictions.
5. The Applicant grounds his application on the following grounds;
  - a. That Len Bomett (deceased) intermeddled with the property of a deceased (Nicholas Kiptoo Bomett) and concealed material facts to the applicant and proceeded to commit a fraud.



- b. That the Kitale Plot No. 200 Katuke was under distress and Len Bomett (deceased) knowingly included it in Succession No. 585 of 2009.
- c. That Len Bomett (Deceased) was aware Kitale Plot No. 200 Katuke was an urgent issue as there was a debt to be paid in order to salvage the property since the previous administrator William Kiprof Bomett (deceased) had failed to pay the outstanding loan balance and he, Len, supported the process with a sworn affidavit knowing that he had already included it in Succession No. 585 of 2009
- d. That Len Bomett got his share of Ngata Farm Nakuru from the previous administrator of the estate of Nicholas Kiptoo Bomett (Deceased) and hence he was not a beneficiary on the Kitale Plot 200 Katuke.
- e. That the Title Deed and/or copies for Nakuru/Municipality Block 15/209 and Kitale Plot No. 200 Katuke were not submitted in Court during the Succession 585/2009 cause application , which raises the question as to the basis of their succession cause as proof of ownership(a mandatory document) during succession cause No. 585/2009 application was never filed.
- f. That the property Nakuru/Municipality Block 15/209 was not under distress to warrant the intermeddling.
- g. That it took time to act on the revocation as the transmission documents of ownership were unavailable as the property was sold and subdivided and new titles acquired i.e Nakuru Municipality Block 15/1030 and 1031 respectively and could not be corrected without a Court Order.
- h. That the Honorable Court ought to emphasize that “He who comes to equity must come with clean hands” and hence allow the application and grant prayers and orders sought.
- i. That any sale or contract entered into before confirmation of grant, particularly concerning immovable property like land, may be voidable if a subsequent beneficiary objects according to Section 82(B) of the *Law of Succession Act*.
- j. That the Learned Judge misapplied Section 93 of the *Law of Succession Act* by affording statutory protection to a purchaser where the underlying transaction was initiated unlawfully and prior to issuance of letters of administration.
- k. That Notice of Board never mentioned the judge present, which establishes the legal validity of succession process and helps protect the rights and interests of beneficiaries, by providing them with information about the succession proceedings and the distribution of assets.
- l. That after the subdivision, Len Bomett transmitted half of the property to himself, (which has already been inherited by his beneficiary, due to the new evidence produced on 26th May, 2025, after ruling of 9th May, 2025– see attached title deed and an eviction notice) and the other half to Patrick Njoroge.
- m. That the issue of innocent purchaser does not arise as he was part of the fraud ab initio since after confirmation the property Nakuru/Municipality Block 15/209 was in the name of Nicholas Kiptoo Bomett (deceased) but at the Land Registry transmission from Nicholas Kiptoo Bomett (deceased) to Len Bomett vide RL19 and RL7 to Len Bomett and Patrick Njoroge happened on the same day 24/10/11 while on the succession the two were equal beneficiaries, this was done to show that Patrick Njoroge was an innocent buyer.



- n. That there was no Application for Consent to the Lands Control Board effecting the transfer from Nicholas Kiptoo Bomett (deceased) to Len Bomett (deceased), subsequent sub-division of Nakuru Municipality Block 15/209 and lastly no Application for transfer from Len Bomett (deceased) to Patrick Njoroge the presumed equal beneficiary.
  - o. That the applicant's ID and Signature were forged with allegations that he was out of the country to give the impression that he had consented to the succession and even Len Bomett (deceased) swore an affidavit affirming the same was true.
  - p. That the Learned Judge failed to properly evaluate the evidence and the affidavit in support of the Summons for Confirmation, particularly the lack of consent and authority by the Applicant.
  - q. That the Learned Judge erred in dismissing the Application dated 4th October 2024 without sufficiently addressing the material inconsistencies and irregularities in the transmission process, including lack of authority and exclusion of a beneficiary.
  - r. That the revocation granted on 27th June, 2022 by Lady Justice Mumbua T. Matheka was based on material facts presented in Court outlining the extent of fraud.
6. The Applicant prays for the following orders:
- a. That the Ruling delivered on 9th May 2025 be reviewed and set-aside.
  - b. That the titles resulting from the subdivision of Nakuru/Municipality Block 15/209, namely Block 15/1030 and 1031, be revoked and/or cancelled as they were obtained fraudulently.
  - c. That the property Nakuru/Municipality Block 15/209 reverts to the estate of the deceased, Nicholas Kiptoo Bomett, for lawful redistribution.
  - d. That the Court issues such other or further orders as may be just and expedient in the circumstances.
7. That the grounds advanced demonstrate, discovery of new evidence not available at the time of ruling, errors apparent on the face of the record, Procedural irregularities and fraud in transmission;
8. That there is need for the Court to exercise its inherent jurisdiction under Section 47 and Rule 73 to prevent injustice and abuse of process and unless the review is granted, substantial injustice will be occasioned and the estate of the deceased will be unlawfully dissipated,
9. This Application is vehemently opposed by objector in his written submissions and frames a solo issue as to Whether the Applicant's failure to disclose the existence of a pending appeal against the ruling of 9<sup>th</sup> May 2025 renders the present application for review incompetent and an abuse of the Court Process and Whether the Applicant has demonstrated the existence of a mistake or error apparent on the face of the record to warrant review under Order 45 Rule 1 of the *Civil Procedure Rules* and Whether the eviction notice dated 26th May 2025 amounts to discovery of a new and important matter or evidence justifying review.
10. The Objector regards the application as an abuse in considering whether the applicant's failure to disclose the existence of a pending appeal against the ruling of 9<sup>th</sup> May 2025 renders the present application for review incompetent and an abuse of the Court process,
11. That Section 80 of the *Civil Procedure Act* Cap 21 and Order 45 Rule 1 of the *Civil Procedure Rules* prohibits seeking review simultaneously Appealing.



12. Reference is made to the Court of Appeal in *Otieno, Ragot & Company Advocates v National Bank of Kenya Limited* [2020 KLR affirmed that the right to review is extinguished once an appeal is filed. The Court stated that:

“It is not permissible to pursue an appeal and an application for review concurrently. If a party chooses to proceed by way of an appeal, he automatically loses the right to ask for a review of the decision sought to be appealed.”

In the present matter, the Applicant lodged a Notice of Appeal dated 23 May 2025 against the ruling now sought to be reviewed. Despite having taken this step, the Applicant proceeded to file the instant application without disclosing the existence of the appeal. This omission is not a minor oversight but a deliberate withholding of a material fact that goes directly to the Court’s jurisdiction to entertain the application.”

13. That it is settled that once an appeal has been filed, the right to seek review of the same decision is extinguished, as review and appeal are mutually exclusive remedies. By pursuing both avenues simultaneously, the Applicant has acted in a manner that is procedurally improper. This concealment is calculated to mislead the Court into assuming jurisdiction it no longer has, thereby rendering the proceedings a nullity. It further amounts to an abuse of the Court process, as it seeks to subject the same ruling to challenge in two different forums concurrently. The rationale is that once an appeal is instituted, the Trial Court becomes *functus officio* in respect of all matters directly or indirectly in issue in the appeal, save only for execution proceedings.
14. Since the Applicant has already appealed, this Court has no jurisdiction to review the ruling. The deliberate non-disclosure of the appeal is enough to dismiss the application with costs.
15. That the Applicant has not show-cased the existence of a mistake or error apparent on the face of the record to warrant review under Order 45 Rule 1 of the *Civil Procedure Rules*.
16. That the law on review of judicial decisions is anchored on Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules*.
17. The law on review of judicial decisions is anchored on Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the *Civil Procedure Rules*. Order 45 Rule 1 which entails 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.
18. Reference is made by the Respondent to the case of *Associated Insurance Brokers v Kenindia Assurance Co. Ltd* [2018] eKLR, Okwengu JA held that Order 45 Rule 1 expressly provides that a mistake or error apparent on the face of the record is a valid ground for review.
19. Similarly, in *National Bank of Kenya Ltd v Ndungu Njau* [1996] eKLR, the Court stated that:-

“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," (Emphasis added)

20. Further in *Nyamogo and Nyamogo Advocates v Kogo* [2001]1 EA 173 the Court clarified that:-
- “An error apparent on the face of the record cannot be defined precisely and 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 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.”
21. That from these authorities, it is clear that a mistake or error apparent on the face of the record must be prima facie visible and must not require a detailed examination or elaborate argument to be established.
22. The Respondent submits that, the Applicant alleges the existence of an error apparent on the face of the record, yet fails to identify any specific, obvious, or self-evident mistake in the ruling sought to be reviewed. Under Order 45 Rule 1 of the *Civil Procedure Rules*, such an error must be immediately apparent from the record itself, without the need for elaborate argument or detailed analysis. It should be so manifest that no Court could arrive at a different conclusion regarding its existence.
23. That the issues raised by the Applicant are matters that were fully canvassed and determined by this Honourable Court in its ruling. The application therefore amounts to an attempt to re-argue the case under the pretext of review. Review proceedings are not intended to provide a platform for parties to re-litigate matters that have already been decided. In the absence of any clear and patent error on the face of the record, this ground must inevitably fail.
24. In conclusion, the Respondent contends that, the Applicant has failed to demonstrate any clear or self-evident error on the face of the record. The issues raised were already determined by this Court and do not qualify as grounds for review. The application is therefore without merit and ought to be dismissed with costs.
25. That Order 45 Rule 1 of the *Civil Procedure Rules* permit a review of a judgment or order where there is discovery of new and important matter or evidence which, despite due diligence, was not within the applicant's knowledge or could not be produced at the time the decree was passed or the order made.
26. In *Rose Kaiza v. Angelo Mpanju Kaiza* [2009] KECA 422, the Court held:
- “An application for review under Order 44 rule 1 must be clear and specific on the basis upon which it is made. The motion before the Superior Court was based on the discovery of new facts. However, it is not every new fact which will qualify for interference with the judgement or decree sought to be reviewed. In the words of the rule itself, it is ".... 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.....". Applications on this ground must be treated with great caution and as required by rule 4(2)(b) the Court must be satisfied that the materials placed before it in accordance



with the formalities of the law do prove the existence of the facts alleged. Before a review is allowed on the ground of discovery of new evidence, it must be proved that the applicant had acted with due diligence and the existence of the evidence was not within his knowledge; where review was sought for on the ground of discovery of new evidence but it was found that the petitioner had not acted with due diligence, it is not open to the Court to admit evidence on the ground of sufficient cause.

### **Final Disposition**

27. I have Considered the Pleadings filed in support of the motion and in opposition and while recalling the principals for grant of the discretionary relief sought and sadly note that the Applicant has not demonstrated discovery of new evidence that was not within his knowledge when the ruling was delivered, the eviction notice or parallel succession in Kitale cannot be said to be new evidence that even with due diligence was not within his knowledge.
28. The Fact that the Applicant filed a notice of Appeal would effectively bar him for a review Application.
29. I am unpersuaded that there exists a new discovery of new evidence not available at the time of ruling or errors apparent on the face of the record; or Procedural irregularities and fraud in transmission.
30. The issues surrounding there having been a parallel succession in Kitale were within the knowledge of the Applicant and as such cannot be new discovery.
31. This Court cannot wade into legalities of parallel proceedings in succession within a motion for review and setting aside where an applicant moves the Court years after transmission and long after demise of his only other beneficiary and brother.
32. The Applicant may consider prosecuting his Appeal or directly suing the estate of his deceased brother for any shortcomings, breach of trust or fraud otherwise the adage “dead men tell no tales” shall continue hovering over this issue.
33. I am now constrained to dismiss this Application with costs to the Respondent who has no relation to the deceased but continues to be dragged into this succession.

It is so ordered

**DATED, SIGNED AND DELIVERED AT NAKURU ON THIS 9<sup>TH</sup> DAY OF OCTOBER 2025**

**MOHOCHI S.M.**

**JUDGE**

