



**In re Estate of Abdulkadir Musse Farah (Deceased) (Succession Cause  
691 of 2019) [2025] KEHC 13635 (KLR) (Family) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13635 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 691 OF 2019  
HK CHEMITEI, J  
OCTOBER 2, 2025**

**BETWEEN**

**FADUMA MOHAMED MIRE ..... PETITIONER**

**AND**

**ALI MUSSE FARAH ..... 1<sup>ST</sup> RESPONDENT**

**SAHRO MAHDI ABDI ..... 2<sup>ND</sup> RESPONDENT**

**MARIAN ABDULKADIR MUSSE ..... 3<sup>RD</sup> RESPONDENT**

**AYAN ABDIKADIR MUSSE ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. This ruling relates to the application dated 5<sup>TH</sup> April, 2025 filed by the Applicants, Sahro Mahdi Abdi and Marian Abdulkadir Musse, seeking for ORDERS THAT:
  1. Spent.
  2. This honourable court be pleased to stay execution of the orders issued pursuant to the ruling delivered on 20<sup>th</sup> March, 2025 by Honourable Justice H. K. Chemitei.
  3. This honourable court be pleased to review directions given on the 20<sup>th</sup> March, 2025 on the disposal of pending chamber summons dated 30<sup>th</sup> October, 2023 and give a date for hearing on priority basis.
  4. This honourable court be pleased to review directions given on 20<sup>th</sup> March, 2025 on the enjoinder of the 1<sup>st</sup> interested party and be pleased to enjoin the proposed interested parties in the interests of justice.



5. This honourable court be pleased to review the orders of 20<sup>th</sup> March, 2025 and substitute Faduma Mohamed Mire with Marian Abdulkadir Musse as one of the legal administrators and personal representatives of the Estate of the late Abdulkadir Musse Farah (Deceased).
  6. In the alternative, this honourable court be pleased to review the orders of 20<sup>th</sup> March, 2025 and issue letters of administration pendelite in favour of Marian Abdulkadir Musse pending the hearing and determination of pending applications and suit.
  7. This honourable court be pleased to vary the order for collection and preservation of rental income due to the estate to be collected by a court appointed agent or deposited to joint account for the advocates of the Petitioner and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents pending hearing and determination of the cause.
  8. Pending the hearing and determination of this application an order do issue directed at the Chief Land registrar prohibiting any further dealings or registering any transactions or entering on the title of that parcel of land known as LR No. 36/VII/288 consisting of the whole ground floor and basement including any subsequent charging transfers.
  9. Pending the hearing and determination of this application an order do issue directed at the Petitioner and the sureties to make a full disclosure and render an inventory of assets and liabilities, deposit original title deeds, title documents and/or certificate of titles of all the properties forming part of the estate of the deceased in court.
  10. Pending the hearing and determination of this application, an order do issue preventing the Petitioner and the proposed 1<sup>st</sup> and 2<sup>nd</sup> interested party and/or any other person from transferring, further charging or in any way dealing with the suit property known as LR No. 36/VII/288 consisting of the whole of ground floor and basement now registered in the name of Abash Enterprises Limited.
  11. This honourable court be pleased to order the sureties to the appointment of the administrator of the Estate namely Stella Wangari Kimaru and Perry Alisti Kegode to deliver to the courts grants and attend court to show cause why the Petitioner/Respondent should not pay or indemnify the Estate for the loss suffered as per the revoked grant in the interests of the Estate.
  12. This honourable court be pleased to order the Directorate of Criminal Investigations to file in court their final report on matters touching the Estate before the final determination of the chamber summons for revocation of grant dated 30<sup>th</sup> October, 2023 and the instant application.
  13. This honourable court be pleased to issue any such orders it may deem fit and convenient in the circumstances of this matter for the ends of justice in this matter.
  14. Costs be provided for in the cause.
2. The application is based on the grounds thereof and supported by affidavits sworn by Sahro Mahdi Abdi and Marian Abdulkadir Musse on 1<sup>st</sup> April, 2025 and 29<sup>th</sup> May, 2025.
  3. Sahro avers inter alia that she is the only lawful wife of the deceased, the father of Marian Abdulkadir Musse and Ayan Abdulkadir Musse. The Petitioner has already acknowledged her as the surviving spouse and recognized her children. She also knows Ali Musse Farah - the 1<sup>st</sup> Respondent - as the deceased's brother, who has helped her manage the estate since her husband's death on 17<sup>th</sup> November, 2016 at Toronto General Hospital, Canada.



4. She argues that the 20<sup>th</sup> March, 2025 ruling ignored crucial evidence of property transfers that the Petitioner made before obtaining letters of administration - transactions that formed the basis of a revoked confirmed grant. These final orders, she says, jeopardize her and her children's inheritance by allowing joint management of the estate with intermeddlers.
5. She deponed that her application dated 30<sup>th</sup> October, 2023, supported by affidavits and investigation reports exposing fraud and misrepresentation, remains pending. The trial court failed to hear that application and instead prioritized the Petitioner's later application dated 28<sup>th</sup> June, 2024, undermining her challenge and prejudicing the estate. She seeks a review of the ruling on the basis of new and important evidence that was not available despite due diligence, including: Fraudulent transfers of LR No. 36/VII/288—56 basement and ground-floor shops - conveyed to Abash Enterprises Limited on 23<sup>rd</sup> March, 2017, years before any grant was issued.
6. Further, material non-disclosure, such as an unserved rent tribunal order used to seize control of the property. False rental-income figures, where the Petitioner claimed monthly collections of over Kshs. 1,400,000/= to secure favorable orders. Use of a forged marriage certificate to claim co-wife status without proof of marriage to the deceased. She also names the estate sureties, Stella Wangari Kimaru and Perry Alisti Kegode, who guaranteed proper administration, and asks the court to compel them to account and indemnify the estate for any loss.
7. According to her, the Petitioner secretly transferred properties and collected rent before any grant was issued or confirmed. Accessed and depleted funds in Barclays Bank Account No. 2033168945 using a special grant. Misled the court into issuing orders based on a decree of 18<sup>th</sup> October, 2023 that had already been set aside.
8. That she faces ongoing criminal charges for fraud and forgery (Criminal Case E.258/2024, Milimani), was arrested at JKIA on 15<sup>th</sup> December, 2023 while attempting to leave Kenya, and remains a flight risk. She maintains that her application dated 30<sup>th</sup> October, 2023 was never decided on its merits and that the court merely treated it as an objection.
9. In her view, the Petitioner should not have been appointed co-administrator after the original grant was annulled for concealment of material facts. She disputes the court's assertion that the 20<sup>th</sup> March, 2025 ruling "unlocked the impasse," noting that the Petitioner continues to rely on falsified records in the ongoing criminal case. She accuses the Petitioner of forum shopping, intimidating witnesses and judicial officers and attempting to block her joinder and review in Kadhi's Case E105/2022, which involves two conflicting decrees.
10. She went on to state that although the ruling at paragraph 50 (d) calls for an oral hearing on whether the Petitioner was married to the deceased, she argues that the Kadhi's Court is compromised. She and Marian Abdulkadir Musse filed affidavits on 1<sup>st</sup> April, 2025 to support review and she insists proposals for a joint estate account, auditor or agent are premature until the widow-status question is resolved. She reports further evidence of fraudulent post-death transfers to the proposed 2<sup>nd</sup> Interested party, managed by the proposed 1<sup>st</sup> Interested party, and asks that they be joined to the proceedings and compelled to account.
11. She denies any fraud or attempt to maintain the status quo, stating instead that the Petitioner and associates have delayed criminal and succession cases to hide theft and mismanagement.
12. She also cited Order 45 of the Civil Procedure Rules, where review is warranted because new and important evidence has emerged that was unavailable with due diligence. There is an error apparent on the face of the record. There are other sufficient reasons, including ongoing criminal and Kadhi's



Court proceedings questioning the Petitioner's suitability. Until the Petitioner proves widowhood or entitlement, she argues, the court should not grant her administrative rights.

13. Marian on her part avers inter alia that she is aware of the 20<sup>th</sup> March, 2025 ruling of this Honourable Court and is aggrieved by it. She respectfully seeks a stay and/or review of the orders on the administration of the estate to protect the interests of the rightful beneficiaries. Her mother, Sahro Mahdi Abdi, is the only lawful wife of the deceased, who built a home and made investments for his family in Kenya. The Petitioner has already acknowledged Sahro, her sister Ayan Abdulkadir Musse, and herself as the deceased's surviving spouse and children.
14. She also knows Ali Musse Farah - the 1<sup>st</sup> Respondent - as her uncle, who assisted the family in identifying and gathering the deceased's assets after his death on 17<sup>th</sup> November, 2016 at Toronto General Hospital, Canada. She argues that the ruling failed to consider property transfers the Petitioner made before obtaining letters of administration ad litem and before the confirmed grant, which was later revoked.
15. Her own application dated 30<sup>th</sup> October, 2023, supported by investigation reports and affidavits detailing fraud and misrepresentation, which the court directed to be treated merely as a protest instead of determining it on the merits ought to have been heard.
16. She highlights that the estate sureties, Stella Wangari Kimaru and Perry Alisti Kegode, who are strangers to the family and employees of Agimba & Co. Advocates, guaranteed the administration of the estate without the family's consent. These sureties undertook to collect and administer the estate according to law. Provide a full inventory and accounts when required by the court. Surrender the grant when ordered. She considers their selection suspicious and irregular, done to conceal the true beneficiaries and administrators.
17. She further asserts that the Petitioner concealed material facts, including the transfer of the entire basement and ground floor of LR No. 36/VII/288 to Abash Enterprises Limited on 23<sup>rd</sup> March, 2017 - years before the issuance of the various grants (letters of administration ad litem on 2<sup>nd</sup> October, 2019, intestate grant on 30<sup>th</sup> October, 2020, and confirmed grant on 22<sup>nd</sup> June, 2021).
18. That Abash Enterprises, the proposed 2<sup>nd</sup> interested party, shares a postal address with the proposed 1<sup>st</sup> interested party and was registered after the deceased's death, without the estate's knowledge or participation. She fears continued wastage of estate assets unless these parties are joined to the proceedings and ordered to account. She maintains that the current status quo prejudices the beneficiaries, as neither the Petitioner nor the proposed interested parties hold valid title to the properties.
19. She therefore seeks: Preservation of the estate, including surrender of title documents and deposit of rental income into a joint account or with a court-appointed agent pending resolution of the administrators. Restoration of the grant and properties to protect the estate during litigation. She further alleges that the Petitioner relied on questionable documents to secure the grant, which were improperly obtained, illegal and now overtaken by new evidence of fraud, misrepresentation and concealment.
20. The Petitioner is accused of material non-disclosure, misleading the court about Sahro's marital status and benefiting from the fraudulent transfers. The Petitioner faces criminal charges with several witnesses lined up to testify against her for gross violations of Kenyan law. She allegedly obtained a special grant of letters of administration and used it to access and deplete funds in Barclays Bank Account No. 2033168945 (Queensway Branch, Nairobi) prior to confirmation of the grant.



21. She deponed that because of the Petitioner's past conduct - including unlawful transfers, misrepresentation and misuse of estate funds - she argues that the Petitioner lacks the integrity to serve as an administrator and does not deserve any equitable relief. She asks the court to review and vary the orders of 20<sup>th</sup> March, 2025, join the proposed interested parties, compel the sureties to account for their guarantee and any loss and preserve all estate assets pending the final determination of the succession dispute. She emphasizes that the Petitioner's actions have violated the rights of the bona fide dependants to obtain and administer the estate and have caused significant loss and prejudice to the rightful heirs.
22. The application is opposed vide replying affidavit sworn by Faduma Mohamed Mire on 12<sup>th</sup> May, 2025.
23. She avers inter alia that she is one of the deceased's widows and supports the ruling delivered on 20<sup>th</sup> March, 2025, describing it as a decision that finally breaks the deadlock in managing the estate and sets a clear path for distributing the assets to the rightful heirs. According to her, the Applicants oppose the ruling only to preserve a status quo that has benefited them since the deceased's death in 2016. She accuses them of deliberately complicating issues that the court has already resolved and of pursuing a fraudulent scheme to delay proper administration of the estate.
24. She states that despite the ruling's explicit orders, the three Applicants and the 1<sup>st</sup> respondent have refused to comply with key directives - such as opening a joint interest-earning account, appointing a registered estate agent and engaging a qualified auditor. Their continued defiance amounts to contempt of court, and she argues they should be denied audience until they obey the existing orders.
25. She maintained that the application for review fails to meet the legal threshold, is frivolous and vexatious and should be dismissed with punitive costs. She notes that this court revoked the original petition issued to her on 30<sup>th</sup> October, 2020 and replaced it with a joint grant, thereby rendering the chamber summons of 30<sup>th</sup> October, 2023 spent.
26. In her view, the supporting affidavit of Marian Abdulkadir Musse dated 1<sup>st</sup> April, 2025 is irregular, filed without leave and should be expunged because it is anchored on an application that no longer exists as the court is already functus officio on the question of revocation.
27. She further deponed that the Applicants are attempting to distance themselves from their longtime ally Ali Musse Farah, even though they previously swore affidavits acknowledging that he worked closely with them in intermeddling with the estate and that they benefited from unlawfully collected rental income.
28. They also issued several powers of attorney - including one by the 2<sup>nd</sup> and 3<sup>rd</sup> Applicants dated 27<sup>th</sup> July, 2018 and another by the 3<sup>rd</sup> applicant dated 4<sup>th</sup> July, 2024 - authorizing him to act on their behalf in all estate matters. She calls it deceitful for them to now list him as a Respondent and engage a new law firm to represent them.
29. She also denied any connection to Abash Enterprises Limited or any sale or transfer of estate assets, insisting she has never dealt with the company. In her understanding, all estate properties remain registered in the deceased's name and any rents have been controlled by the Applicants themselves through Ali Musse Farah and Hussein Hassan Bood, who allegedly assisted him in intermeddling with the estate.
30. she therefore argues that the Applicants' requests - particularly prayers 8, 9 and 10 seeking explanations for alleged transfers - are baseless and aimed at misleading the court. If the property known as LR No. 36/VII/288 had truly been sold to Abash Enterprises, she reasons, the Applicants would not still be collecting rent from it.



31. She further points out that several prayers in the application merely repeat existing orders, such as the directive in Order 50 (g) of the 20<sup>th</sup> March, 2025 ruling that already authorizes the Deputy Registrar to appoint an estate agent to collect rent and deposit it into a joint interest-earning account held by both parties' advocates. Other prayers, including 5 and 6, are equally ill-founded and unnecessary. She argues that Marian Abdulkadir Musse, the 3<sup>rd</sup> Applicant, is already properly represented by her mother Sahro Mahdi Abdi, making any attempt to appoint Marian separately as an administrator defective and untenable.
32. Finally, she emphasizes that none of the Applicants' allegations are supported by credible evidence and that the Chief Kadhi's judgment of 18<sup>th</sup> October, 2023 in KCMC No. E015 of 2022 remains valid and has never been set aside, despite a fresh review application filed by the Applicants through the 1<sup>st</sup> Respondent. For these reasons, she asks the court to dismiss the entire application with costs and enforce full compliance with the existing orders of 20<sup>th</sup> March 2025. Bottom of Form
33. The Applicants have filed written submissions dated 10<sup>th</sup> June, 2025 placing reliance among others on the following:-
- a. *Birket v Arcon Business Machines Ltd* [1999] 2ALL ER 429 where the court stated as follows: "...if a transaction was on its face manifestly illegal, the court would refuse to enforce it, whether or not either party alleged illegality. If a transaction was not on its face manifestly illegal but there was persuasive and comprehensive evidence of illegality, the court might refuse to enforce it even if illegality had not been pleaded or alleged. The principle behind the court's intervention of its own motion in such a case was to ensure that its process was not being abused by an invitation to enforce sub silentio a contract whose enforcement was contrary to public policy."
  - b. *Makula International Ltd vs His Eminence Cardinal Nsubuga and Another* [1982] HCB II where the Ugandan court of appeal held as follows: "... a court of law cannot sanction what is illegal and illegality once brought to the attention of the court, overrides all questions of pleadings including admissions made thereon."
34. The Respondent has filed written submissions dated 21<sup>st</sup> July, 2025 placing reliance among others on the following:-
- a. *John Mundia Njoroge & 9 others vs Cecilia Muthoni Njoroge & Another* [2016] eKLR where the court 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."
  - b. *Paul Mwaniki vs National Hospital Insurance Fund Board of Management* [2020] eKLR where the court stated as follows: "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 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 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 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 purposes 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 on fact or law. In any case, while exercising the power of review, the court/ tribunal concerned cannot sit in appeal over its judgment/ decision. 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.”

### **Analysis and Determination**

35. I have read the application before this court and the rival submissions and the cited authorities.
36. The issues for determination, as crafted by the parties are as follows:-
- Applicants
- i. Whether the Petitioner is a suitable party to be a co- administrator.
  - ii. Whether there are discoveries of new and important information.
  - iii. Whether the court has powers to review orders issued on 20<sup>th</sup> March, 2025.
  - iv. Whether the 3<sup>rd</sup> Respondent can be granted letters of administration pende lite.
  - v. Whether the proposed Interested parties should be joined to the case.
  - vi. Whether the affidavits filed on 1<sup>st</sup> April, 2025 by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are properly before the court.
  - vii. Who should meet the costs of the summons for review.
- Respondent
- viii. Whether the Applicant has met the threshold for grant of the review orders sought in the application dated 5<sup>th</sup> April, 2025.
  - ix. Whether Respondent is a beneficiary as per section 29 of the Law of Succession Act, Cap 160.
37. The provisions of order 45 rule 1 of the civil procedure rules on review are clear and unless a party brings himself within those grounds the application does not stand.
38. In National Bank of Kenya Ltd vs Ndungu Njau Civil Appeal No. 211 of 1996 (UR) the court held inter alia.:
- “A review may be granted whenever the court considered 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.”
39. I have on this note perused the entire application and I respectfully doubt whether it meets the threshold.



40. I state so for the reasons that the issues which the Applicants are calling new and important and or errors apparent on the face of record do not amount to such. As a matter of fact, the reasoning of this court vide the impugned ruling of 20<sup>th</sup> March 2025 was to give room to preservation of the estate pending a formal hearing.
41. The Applicants have raised issues which ought to have been raised at least when the application was being canvassed or at least during substantive trial. As a matter of fact, the affidavits in support are full of factual evidence which this court will need to analyze after the parties have orally testified in court.
42. I note that Order No. 50 (b) of the ruling delivered on 20<sup>th</sup> March, 2025 has been complied with thus rendering prayers 5 and 6 of the application dated 5<sup>th</sup> April, 2025 overtaken by events.
43. On the other hand, Orders No. 50 (d), 50 (e), 50 (f), 50 (g) and 50 have not been complied with.
44. Order 50 (j) is to the effect that Ali Musse Farah and Hussein Hassan Bood are stopped from intermeddling in any way with the affairs of this estate and they must cooperate with the appointed auditors. It therefore, beats logic, to seek for Hussein Hassan Bood's joinder vide prayer 4 of the application dated 5<sup>th</sup> April, 2025.
45. Prayer No. 7 has been covered under Order 50 (e) and prayer No. 9 has been covered under Order 50 (h).
46. Considering the above observation, I find that the application is not merited and the same is therefore disallowed. The Applicants if dissatisfied may move to the appellate court.
47. For now, let compliance be made in respect to the orders of 20<sup>th</sup> March 2025. The parties ought to proceed and fix this matter for trial as a matter of priority.
48. The application is otherwise dismissed with no order as to costs.

**DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 2<sup>ND</sup> DAY OF OCTOBER 2025.**

**H K CHEMITEI**

**JUDGE**

