



REPUBLIC OF KENYA



**In re Estate of John Njoroge (Deceased) (Succession Cause
738 of 2021) [2025] KEMC 109 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEMC 109 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
SUCCESSION CAUSE 738 OF 2021
PA NDEGE, SPM
MAY 20, 2025
IN THE MATTER OF THE ESTATE OF JOHN NJOROROG (DECEASED)**

RULING

1. Before the court is a Summons Application dated 22nd April, 2025 where the Applicant prays an order that the Certificate of the Grant of Letters of Administration issued to Winfred Nyambura Njoroge in this matter and confirmed on 28th day of November, 2022 be reviewed and amended in the following respects: -
 - a. That equity bank account No. 0130xxxxxxxx which was omitted be included.
 - b. That the monies in the said accounts be inherited by Winfred Nyambura Njoroge – Whole Share.
 - c. That costs of this application be in the cause.
2. The application is premised upon Rules 49, 59 and 63, of the *Probate and Administration Rules*, and Order 45, Rule 1 of the *Civil Procedure Rules* Cap 21 Laws of Kenya. The Application is supported by the annexed Winfred Nyambura Njoroge sworn on 22nd April, 2025.
3. In this case, the deceased died on 26th December, 2017. Consequently, Winfred Nyambura Njoroge was issued with Grant of letters of Administration to the estate of the deceased on 13th October, 2021. The Grant was subsequently confirmed on 28th November, 2022.
4. The Applicant states that she came to know of the existence of the account after the petition was filed and the grant confirmed. The Applicant has however failed to provide the account documents to prove the existence or ownership of the said account.
5. Whereas the Application is unopposed; as a court of law, I have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. As held by the Supreme Court of Kenya in *Gideon S. Konchellah v Julius L. Sunkuli & 2 others* [2018] eKLR, it behoves the court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The



court is thus under a duty to look at any points of law, such as any jurisdictional impediment, which might render the application a non-starter, or whether there is sufficient material that might enable the court to exercise its discretion in favour of an applicant, just like in case of a formal proof proceeding where the respondent or defendant fails to answer to claim in a main suit.

6. Rule 63 of the *Probate and Administration Rules* recognizes that the provisions of Order 45 of the *Civil Procedure Rules*, are some of the specific provisions of the *Civil Procedure Rules* applicable to succession proceedings. It states that;

Save as in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the *Civil Procedure Rules*, namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), ... shall apply so far as relevant to proceedings under these Rules.

7. Under Order 45 of the *Civil Procedure Rules*, review can only be allowed under the following circumstances:
 - a. Discovery of new and important matter of evidence which, after 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.
 - b. Mistake or error apparent on the face of the record.³ Any other sufficient reason which may make the court to review its order.
8. In *John Mundia Njoroge & 9 others v Cecilia Muthoni Njoroge & another* [2016] eKLR, the Court held:-

...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*.

9. *In the matter of the Estate of Geoffrey Kinuthia Nyamwinga (deceased)* [2013] eKLR, the court stated: -

A review under order 45 of the *Civil Procedure Rules* may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason.
10. *In re estate of Charles Kibe Karanja (deceased)* [2015] eKLR, the court stated: -

Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiaries on the basis that the said assets or heirs were left out by mistake or error. Where assets are discovered after the Court has confirmed the grant or an heir or survivor of the deceased who had previously been unheard of materializes after distribution, the Court may review its orders made at the point of confirming the grant on the ground



of discovery of new and important evidence that was not available at the time the grant was being confirmed...

11. The Applicant avers that she came to know, hence discovered, the existence of the bank account herein after the petition was filed and grant confirmed. She has however failed to adduce sufficient evidence to prove the existence of this account, or that it belongs to the deceased and hence the discovery of this new asset at this late stage.

12. In *National Bank of Kenya LTD v Njau* [1995-1998] 2EA 249 (CAK); at page 253 of the judgment, the Court stated: -

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.

13. I do find no evidence of an error or discovery of new evidence herein as the applicant has failed to attach accounts documents or any other exhibit to prove the existence of the bank account herein and that it belonged to the deceased. The existence of this asset should therefore not be presumed and in this regard, the Application dated 22nd April, 2025 is hereby declined for want of proof and/or evidence.

Costs shall be in the cause

DATED, SIGNED AND DELIVERED AT NAKURU THIS 20TH.DAY OF MAY. 2025.

ALOYCE-PETER-NDEGE

SENIOR PRINCIPAL MAGISTRATE

Ruling delivered physically/online the presence of:

.....N/A.....for the Applicant

.....Janet.....Court Assistant

