



**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO. 580 OF 1993**  
**IN THE MATTER OF THE ESTATE OF DANIEL OWINO**  
**ODUOR (DECEASED)**

**LUCIA ADHIAMBO OWINO .... 1<sup>ST</sup>**

**APPLICANT/ADMINISTRATOR**

**BEATRICE AKINYI OWINO ... 2<sup>ND</sup>**

**APPLICANT/ADMINISTRATOR**

**VERSUS**

**ARTHUR ONYANGO OWINO .....**

**RESPONDENT**

**RULING**

1. This ruling relates to the application dated **13<sup>th</sup> December, 2023** filed by the Applicants, Lucia Adhiambo Owino and Beatrice Akinyi Owino, seeking for **ORDERS THAT:-**

**a) This court be pleased to review its ruling and/or order dated 13<sup>th</sup> February, 2023 by vacating it or setting it aside in its entirety.**

**b) Upon the grant of prayer (a) above, leave be granted to the Administrators of the Estate of the Deceased to file their response to the**

**application dated 14<sup>th</sup> December, 2022 within 14 days from the date of the order.**

**c) In the alternative, upon the grant of prayer (a) above, the matter be referred to mediation for settlement.**

**d) The costs of this application be provided for.**

2. The application is based on the grounds thereof and supported by affidavits sworn by Lucia Adhiambo Owino, Beatrice Akinyi Owino and Rose Marie Killie Owino on **13<sup>th</sup> December, 2023** and **12<sup>th</sup> May, 2025**.
3. They aver *inter alia* that they are the Administrators of the deceased's estate. The Respondent, who is the Applicant in the application dated **14<sup>th</sup> December, 2022**, procured the ruling and/or orders issued on **13<sup>th</sup> February, 2023** through material non-disclosure and the wilful exclusion of necessary parties from the proceedings. The Administrators were never served with the said application and only became aware of it in November, 2023.
4. That the adverse orders that were issued ought to have been directed against Mariam Kassim Alambo, who is alleged to have trespassed upon property **L.R. No. Kisumu/Songhor/1278**, rather than against the Administrators of the deceased's estate. The said Mariam Kassim Alambo is unknown to the Administrators, and in the interest of justice and for the integrity of the deceased's estate, the Applicant should be compelled to clarify her identity and role.
5. The Respondent maliciously obtained the impugned orders by falsely alleging harassment by Mrs. Rosemarie Owino,

the 84-year-old widow of the deceased. In truth, it is the Applicant and his family who have persistently harassed, insulted and verbally abused her - calling her “a dirty old woman” and “a witch,” and wishing her death - causing her emotional distress and straining family relations.

6. Since **L.R. No. Kisumu/Songhor/1278** was duly allocated to the Applicant and his family, neither Mrs. Rosemarie Owino nor the Administrators have interfered with his occupation of the property in any way. The Respondent misled the court by making false representations and concealing material facts, particularly that he had moved out of **L.R. No. Kisumu/Songhor/1278** and encroached upon **L.R. No. Kisumu/Songhor/1280**, which belongs to Margaret Adhiambo Rayola.
7. Further and through her advocates, Margaret Rayola issued a demand letter dated **14<sup>th</sup> March, 2023**, requiring the Respondent to vacate **L.R. No. Kisumu/Songhor/1280**, failing which legal action would ensue. Despite this, he has refused to comply. As a result of these misrepresentations, the court arrived at its determination without all the material facts and without the proper parties being before it.
8. This Honourable Court, therefore, has unfettered discretion to review its orders on account of sufficient cause and the present application raises adequate grounds for such review and setting aside. Had this information been available to the court prior to the ruling, a different outcome would have been reached. The court

retains discretionary power to review its orders and correct errors apparent on the record, including orders issued against the wrong parties.

9. They further deponed that the orders of **13<sup>th</sup> February, 2023** thus deserve to be set aside for material non-disclosure and deliberate exclusion of necessary parties, particularly Mariam Kassim Lambo, who is alleged to have trespassed on **L.R. No. Kisumu/Songhor/1278**. It is illogical for the Respondent to now deny knowledge of Mariam Kassim Lambo, yet in his own affidavit supporting the application of **14<sup>th</sup> December, 2022**, he alleged that on **13<sup>th</sup> December, 2022**, she approached and threatened to evict him from the said property. It is therefore evident that he cannot disassociate himself from an individual he previously claimed to have personally encountered.
10. Indeed, it is not unusual for the Respondent to deal with strangers concerning **L.R. No. Kisumu/Songhor/1280**, given his habit of leasing the property to unknown individuals and squandering the proceeds irresponsibly. Therefore, Mariam Kassim Lambo is known only to the Respondent and his attempt to deny this is dishonest and self-serving. The orders issued against the Administrators should instead have been directed against Mariam Kassim Lambo, as she is the alleged trespasser, not the Administrators of the deceased's estate.
11. The estate of the deceased has been fully distributed and an inventory filed before this court. It is therefore untrue that the beneficiaries have been kept uninformed

regarding the administration of the estate - the court record clearly confirms otherwise. In fact, the Respondent himself has previously appeared before this court and filed documents, which raises the question: at what point was he or anyone else excluded? It is apparent that the Respondent is the perpetual aggressor in this matter, having engaged in continuous provocation, misrepresentation and misuse of court process, all to the prejudice of the deceased's estate and its beneficiaries.

12. The application is opposed vide replying affidavit sworn by Arthur Onyango Owino on **18<sup>th</sup> February, 2025**. He avers *inter alia* that he is one of the children of the late Fredrick Ochieng' Owino, who passed away on **18<sup>th</sup> November, 2011** and was a son of the deceased, Daniel Owino Oduor, making him the grandson of the deceased in this cause.
13. Under **Order 45 Rule 1** of the Civil Procedure Rules, a court may review its decision where there exists an error or mistake apparent on the face of the record, or any other sufficient reason. Such an error must be self-evident, not one requiring extensive argument to establish. The depositions made in the Applicants' supporting affidavit, however, amount to an attempt to appeal against the court's decision, rather than seeking review within the limited scope allowed by law. Their claim that the court should have reached a different conclusion raises matters fit for appeal, not review. Therefore, the alleged "material non-disclosure" and "wilful exclusion of necessary parties" do not constitute an error or sufficient reason under the law to justify review.

14. Following the death of his grandfather, letters of administration were issued on **30<sup>th</sup> June, 1993** and confirmed on **4<sup>th</sup> March, 1998**, jointly to James Odhiambo Owino, his uncle, who died on **12<sup>th</sup> May, 2013**; and Lucia Adhiambo Owino, his aunt, who subsequently became the sole administrator pursuant to **Section 81** of the Law of Succession Act. The grant was later rectified on **24<sup>th</sup> July, 2017** without the knowledge or participation of all the beneficiaries, creating serious inconsistencies between the rectified grant and the confirmed grant of **4<sup>th</sup> March, 1998**.
15. This issue is central to his further affidavit dated **5<sup>th</sup> December, 2022** and filed on **6<sup>th</sup> December, 2022**, in support of his summons for inventory of assets and accounts dated **2<sup>nd</sup> March, 2020**, which is still pending before the court. The discrepancies raise serious questions about the validity and fairness of the rectification process. The inconsistencies include: The distribution of property was not done in accordance with the confirmed grant of 1998, as noted in Rosemarie Killie Owino's affidavit sworn on **29<sup>th</sup> September, 2020**. The confirmed grant of 1998 provided that Hillside Farm - Plot 159 - be distributed equally among the five children of the deceased namely James Odhiambo Owino, Beatrice Akinyi Owino, Fredrick Ochieng' Owino (deceased), Lucia Owino and Caroline Owino and each to receive one-fifth (1/5) share.
16. However, the inventory of assets now lists Rosemarie Killie Owino (spouse) as a beneficiary and allocates one-sixth (1/6) to each, thereby reducing the children's shares and

contradicting the confirmed grant. The rectified grant of 2017 further provided that all six persons, including Rosemarie Owino, receive equal 1/6 shares, contrary to the 1998 grant. The inventory and statement of completed administration also indicate that subdivision **Kisumu/Songhor/1274** is to be further divided only among Rosemarie Owino (spouse) and the estates of James Owino and Caroline, granting them larger portions than the confirmed grant allows.

17. The inventory is inconsistent with the rectified grant, listing **Kisumu/Songhor/763** and **Plot 159 Songhor** as two distinct parcels, yet the inventory records **Kisumu/Songhor/763** as a subdivision of **Plot 159**. The inventory and affidavits fail to mention two other subdivisions of **Plot 159**. According to records he obtained from the Awasi Land Registry, **Plot 159** was subdivided by the Administrators in 1999 into: **Kisumu/Songhor/763 (32.77 ha)**, **Kisumu/Songhor/764 (4.97 ha)** and **Kisumu/Songhor/765 (7.26 ha)**. Yet, the inventory only acknowledges **Plot 763** only and omits the others.
18. He further states that he never received up to **10 acres** of the land as alleged by Rosemarie Killie Owino, and as a beneficiary through his late father, he is entitled to a greater share than the **4.0 hectares** claimed by Lucia Owino.
19. The record of the court shows that his injunction application dated **14<sup>th</sup> December, 2022** was duly served upon the Respondents' counsel on **10<sup>th</sup> January, 2023**, supported by the affidavit of service sworn by Koile

Celestine Anyango on the same date. He reiterates that Mariam Kassim Alambo is unknown to him, his mother Janet Atieno Ogutu and his siblings. His grandmother, however, has continued to act aggressively and in a hostile manner towards their family, harassing him and his mother for allegedly occupying a portion of **L.R. No. Kisumu/Songhor/1278**. He has never responded to her provocations.

20. He also deposes that Margaret Rayola, accompanied by police officers, ordered him and his mother to vacate **L.R. No. Kisumu/Songhor/1278**, claiming to have purchased it from his grandmother and has since erected a perimeter fence on parts of the land. She has never issued any formal notice to vacate and the alleged **L.R. No. Kisumu/Songhor/1280** remains unknown to him and his family.
21. He avers that the Applicants' claims in the supporting affidavit are merely an attempt to delay accountability and avoid examination of the Administrators' actions under the original confirmed grant and the questionable rectified grant obtained without the beneficiaries' knowledge, consent or participation. The present application fails to meet the legal threshold required for the court to exercise its discretionary power of review, and as such, he prays that the application be dismissed with costs to him.
22. The Applicants have filed written submissions dated **19<sup>th</sup> February, 2023** placing reliance on the following:-
  - a. **Re Estate of Mukemo Murere Ndege (deceased) (Succession Cause No. 61 of 2012) [2023] KEHC**

**23363 (KLR)** where it was held as follows: ***“I am tasked with determining a summons for revocation of grant, dated July 27, 2023, which is brought at the instance of John Ouma Ekesa. I shall refer to him as the Applicant... There is a return of service, dated August 17, 2023 indicating that the application was served on the Advocates for the administrator, that is to say I have scoured through the file before me, and I have not come across a response, by the administrator, to the application, dated July 27, 2023. So, I shall treat the said application as unopposed.”***

- b. **Rioretta v Rengono (Land Case 70 of 2018) [2024] KEELC 3635 (KLR) (4 April 2024) (Ruling)** where it was held as follows: ***“In any event, the plaintiff was given opportunity at the hearing to prove that the defendant was the right person whom he sued. He provided evidence which in his assessment was sufficient at the time. After that the court weighed the evidence and found that it was insufficient. Is this a matter the court should go over again? I think not. To do so would be to give the Applicant a second bite at the cherry, that is to say, giving him a second go at the litigation over this issue. For the sweetness to remain, cherries are eaten only once.***

***Therefore, I find no merit in the application. I dismiss it with costs to the Respondent.***

23. The Respondent has filed written submissions dated **12<sup>th</sup> September, 2025** placing reliance on the following:

a. **Pancras T. Swai v Kenya Breweries Limited [2014] KECA 883 (KLR)** where the court stated as follows: ***“... 30. The discovery of new and important matter or evidence or error apparent on the face of the record or for any other sufficient reason in Rule 1 of Order 44 (now Order 45 in 2010 Civil Procedure Rules) relates to issues of facts which may emerge from evidence. Th discovery does not relate or refer to issues of law. The existence of due diligence referred to in Rule 1 refers to discovery of facts but does not relate to ascertainment of existing law which the court is deemed to be alive to.”***

b. **Mathews v Masika KEHC 12194 (Civil Case No. E180 of 2022) [2022] KEHC 12194 (KLR)** where it was stated as follows: ***“In his supporting depositions, the defendant does not disclose his email address or deny that the address set out in the affidavit of service is his. He does, however, admit that he received the decree through his personal Gmail address. Without any rebuttal or contrary evidence, I am entitled to conclude that the email address used by the plaintiff belongs to the defendant particularly***

***given that the defendant admits that the parties had been in correspondence as shown by the various emails in the plaintiff's bundle of documents."***

### **ANALYSIS AND DETERMINATION**

24. I have looked at the application, the response thereto and the rival submissions and the lengthy history of this cause.
25. In **National Bank of Kenya Limited v Ndungu Njau [1997] KECA 71 (KLR)** the court pronounced itself 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 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."***
26. Based on the provisions of Order 45 of the Civil Procedure Rules I do not respectfully find evidence of any new and important facts that warrants interference by this court of its impugned ruling. The affidavit of service by Koile Celestine Anyango sworn on 10<sup>th</sup> January 2023 indicates that the Respondents were duly served through their counsel on record.

27. As to whether there were other persons that ought to have been served and, in this case, Mariam Kassim Alambo is an issue within the Applicant's knowledge and they ought to have raised it during the hearing inter partes of the application.
28. For now, I do not find merit in the application and I disallow the same.
29. Finally, I have perused the record herein and note that the entire deceased estate is based at Kisumu County. All the contested parcels of land are described as Kisumu/Songhor. To the best of my knowledge the same are within Kisumu County.
30. In the premises and as deduced from the various rival affidavits the beneficiaries are based in Kisumu and this cause for whatever is pending shall be best handled at Kisumu High Court which is equally sized with jurisdiction to deal with the matter. It is equally proximately closer for the parties.
31. The parties shall be at liberty to agitate what is pending herein before the said court.
32. **Consequently:-**
- (a) The application dated 13<sup>th</sup> December 2023 is hereby disallowed.**
  - (b) This cause is hereby transferred to Kisumu High Court for further determination of any pending issue.**
  - (c) Costs in the cause.**
- Dated signed and delivered at Nairobi via video link  
this 20<sup>th</sup> day of November 2025.**

**H K CHEMITEI**  
**JUDGE**