



REPUBLIC OF KENYA



In re Estate of Eunice Wambui Ngobia (Deceased) (Succession Cause 179 of 2012) [2025] KEHC 16722 (KLR) (18 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16722 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
SUCCESSION CAUSE 179 OF 2012
SM MOHOCHI, J
NOVEMBER 18, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE EUNICE WAMBUI NGOBIA (DECEASED)

BETWEEN

LABAN KANGUNDA THUMI APPLICANT

AND

DANIEL MAINA GITHUKU RESPONDENT

RULING

1. On the 27th February 2025 this Court delivered a ruling dismissing the Applicant's Summons for revocation of grant dated 23rd June 2023. On the 4th July 2025 the Applicant moved this Court vide a Notice of Motion to set aside the ruling and render a fresh ruling.
2. The Applicant seeks the following reliefs;
 - a. That this Honourable Court be pleased to set-aside its ruling dated 27th February, 2025, in this matter.
 - b. That the Honourable Court be pleased to render a fresh ruling that incorporates and takes into account the witness testimony on record, the documents produced in evidence, and the written submissions duly filed by the Applicant.
 - c. That the costs of this application be in the cause.
3. The Application premised on the following grounds;
 - a. That the ruling delivered in this matter on or about 27th February, 2025, dismissed the Applicant's application dated 23rd June, 2025 without giving reasons for the decision, contrary to Article 50(1) of *the Constitution* which guarantees the right to a fair hearing.



- b. That the Honourable Court did not consider and incorporate the Applicant's witness's oral testimony, the documents tendered during the hearing, and the detailed submissions filed on 15th August, 2024, thereby occasioning a miscarriage of justice.
- c. That the duty to deliver reasoned decisions is constitutional and judicial in nature, as reaffirmed by the Supreme Court of Kenya in Petition No. 4 of 2020, where the Court held that
"Though independent in the way they arrive at their decisions, judges are subject to a number of forms of accountability... In this regard, there is a duty on the judges to give reasons for their decisions. It is only by giving reasons for their decisions that those aggrieved may appeal those decisions..."
4. That the absence of reasons in the ruling has denied the Applicant the opportunity to understand the basis of the dismissal and to file a meaningful and informed appeal.
5. That the e-filing system reflects the ruling as having been delivered on 19th February, 2025, whereas the official date given on 18th February, 2025 in open Court was 19th March, 2025, and the hard copy ruling is dated 27th February, 2025, this irregularity cast doubt on the actual delivery date and impaired the Applicant's right to timely appeal.
6. That there is credible information that the estate properties are at risk of being sold, transferred, or otherwise disposed of before the application is heard and determined, which would irreversibly prejudice the Applicant's interest in the estate.
7. That the Application is made without delay, in good faith and in the interest of justice and fairness.
8. The Applicant depones that, he filed an application in this matter seeking to be recognized as a beneficiary of the estate of the late Eunice Wambui, being her grandchild through her adopted daughter, Margaret Wanjiru Ngombia.
9. That, the matter proceeded to hearing and parties were directed to file written submissions, which I did on 15th August, 2024.
10. That, the Honourable Court gave a ruling date of 18th February, 2025.
11. That, on 18th February, 2025, he attended Court and his advocate was present virtually when the Court stated that the ruling was not ready and gave a further ruling date of 19th March, 2025.
12. That, when he perused the e-filing system, he discovered that the ruling was recorded as delivered on 19th February, 2025.
13. That, upon further inquiry, he located the physical file in the archives, and noted that the ruling was dated 27th February, 2025.
14. That, immediately upon the finding, he contacted his advocate on record who did a letter to the deputy registrar to confirm authenticity of the ruling vide a letter dated 12th March, 2025.
15. That, vide a letter dated 14th March, 2025, the Deputy Registrar confirmed the ruling as having been delivered before this Honourable Court.
16. That, the ruling only dismissed my application without providing any reasons whatsoever for the decision.
17. That, he was unable to file an appeal due to the discrepancies in the dates of delivery and, more importantly, due to the absence of the Court's reasons for the decision.



18. That, he is advised by his advocate, which advice he verily believe to be true, that the duty to give reasoned decisions is a constitutional imperative under Article 50(1) of *the Constitution* and has been restated by the Supreme Court in Petition No. 4 of 2020, Muya v Tribunal Appointed to Investigate the Conduct of Justice Martin Mati Muya, Judge of the High Court of Kenya (Petition 4 of 2020) [2022] KESC 16 (KLR) (Civ) (19 May 2022) (Judgment).
19. That, in the aforesaid case, the Supreme Court stated that:
- “Though independent in the way they arrive at their decisions, judges are subject to a number of forms of accountability which are not incompatible with their individual and institutional independence. To begin with, they are accountable through the public nature of their work but more particularly through the appellate system of the Courts. In this regard, there is a duty on the judges to give reasons for their decisions. It is only by giving reasons for their decisions that those aggrieved may appeal those decisions. Transparency that builds public confidence in the judicial process will be achieved through reasoned decisions.”
20. That, the absence of reasons in the ruling has denied him the right to understand the basis of the decision and thus infringes on his right to a fair hearing and appeal.
21. The Applicant urges the Court to review the ruling and incorporate the reasons behind the dismissal of his application in the interest of justice, accountability, and transparency.
22. The Application is opposed vide the grounds of opposition dated 1st September 2025 plus a replying Affidavit by Lawrence Ngugi Mwangi Advocate as follows;
- i. This Honorable Court is functus officio and has no jurisdiction to entertain or hear the same.
 - ii. The application is vexatious, ambiguous and fatally defective and irreparable.
 - iii. The application is contemptuous, incomplete, misleading and fatally fallacious.
 - iv. The application is embarrassing, incompetent and has been brought to Court on whimsical, fallacious and capricious grounds.
 - v. The remedy lies elsewhere in the Court of Appeal and never before this Honorable Court.
 - vi. The applicant has come to Court in dirty hands.
 - vii. The application is procedurally bad in this Court.
23. The Court had directed that parties to file written submissions in support of their respective cases but none of them complied.
24. Order 45 Rule 1 (1) and (2) of the Civil Procedure Rules which donates to this Court the power to review its decree or order states that:
- 1 (1) “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 orders without un-reasonable delay”.

25. Order 45 (1) of the Civil Procedure Rules obligates an application for review to be restricted to the grounds set out therein which are:
 - i. Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the Applicant’s knowledge or could not be produced at the time when the decree was passed or order made;
 - ii. On account of some mistake or error apparent on the face of the record;
 - iii. For any other sufficient reason.
 - iv. The application must then be filed without un-reasonable delay.
26. A cursory look at the Notice of Motion Application as filed does not reveal any discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the Applicant’s knowledge or could not be produced at the time when the decree was passed or order made.
27. No mistake or error apparent on record is show-cased as a basis of the application.
28. The Application was filed almost five (5) months after the delivery of the ruling while the Applicant had already been notified on the 14th March 2025 by the Deputy Registrar, of the delivery of the ruling and no effort has been made by the Applicant to justify delay in moving the Court. I accordingly find the delay to be inordinate, without reason hence unreasonable.
29. The Applicant had the opportunity to move the Court for leave to Appeal which he elected not to.
30. Under Article 50 (1) of *the Constitution*, every party has a right to be heard and the fundamental duty of the Court is to ensure that the parties that are seeking justice can access justice by being accorded such opportunity to be heard.
31. In the case of Mureithi Charles & Another v. Jacob Atina Nyagesuka [2022] KECH 1805 (KLR), the Court held as follows:-“
 28. In considering whether or not to set-aside a judgement, a judge has to consider the matter in the light of all the facts and circumstances both prior and subsequent and of the respective merits of the parties before it would be just and reasonable to set aside or vary the judgement, if necessary, upon terms to be imposed. Hence the justice of the matter and the good sense of the matter, are certainly matters for the judge. It is, as I have held elsewhere in this ruling an unfettered discretion, although it is to be used with reason, and so a regular judgement would not usually be set aside unless the Court is satisfied that there is a defence on the merits, namely a prima facie defence which should go to trial or adjudication. The principle obviously is that, unless and until the Court has pronounced a judgement upon the merits or by consent it is to have the power to invoke the expression of its coercive power, when that has been obtained only by a failure to follow any of the rules of procedure. It is then not a case of the judge arrogating to himself a superior position over a fellow judge, but being required to survey the whole situation to make sure that justice and common sense prevail. Indeed, there is no parallel with an appeal. The judge before whom the application for setting aside is presented will have a greater range of facts concerning the situation after an inter partes hearing, than the judge who acts ex parte. Moreover, the judge is not interfering with the findings made by a fellow judge but is making sure that injustice or hardship would not result from accident,



inadvertence or excusable mistake or error. The substance of his judgement would be that in view of the defence, there is prima facie defence. He may not be satisfied with the blunders or non-attendance of the defendant or his advocate, but nevertheless he may hold that it would be just to set aside the ex parte judgement.

32. I find the Notice of Motion application dated 4th July 2025 to be without merit and the same is accordingly dismissed with costs to the Respondent.

RULING READ, SIGNED AND DELIVERED AT NAKURU THIS 18TH DAY OF NOVEMBER, 2025

MOHOCHI. S. M.

JUDGE

