



**In re Estate of Kimitei Chirchir (Deceased) (Succession Cause  
29 of 2016) [2025] KEHC 16299 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16299 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
SUCCESSION CAUSE 29 OF 2016  
JK NG'ARNG'AR, J  
NOVEMBER 12, 2025  
IN THE MATTER OF THE ESTATE OF KIMITEI CHIRCHIR (DECEASED)**

**BETWEEN**

**PAUL KERING ..... APPLICANT**

**AND**

**CHARLES KOSKEI ..... RESPONDENT**

**RULING**

1. The Applicant filed a Notice of Motion Application dated 28<sup>th</sup> March 2025 where he sought a review of this court's Ruling dated 12<sup>th</sup> March 2025.
2. The Application was brought under Order 45, Order 51 Rule 1 of the Civil Procedure Rules and sections 1A, 1B, 3A and 80 of the *Civil Procedure Act*. The Application was based on the grounds on the face of the Application and further by the annexed Supporting Affidavit of Paul Kipsang Kering sworn on 28<sup>th</sup> March 2025.

**The Applicant's case.**

3. The Applicant stated that through the Application dated 23<sup>rd</sup> September 2024, the Respondent sought to commit him to jail for contempt of orders of this court issued on 6<sup>th</sup> December 2024. That the Application was premised on the destruction of trees.
4. It was the Applicant's case that the orders of this court dated 6<sup>th</sup> December 2023 were issued ex-parte and the Applicant was never served with the said orders and there was no affidavit of service to prove service. That through his Replying Affidavit, he contested the service of the said orders but this court found him guilty of contempt. It was the Applicant's further case that this court based its finding on the Chief's Letters dated 25<sup>th</sup> December 2023 and 16<sup>th</sup> September 2024 and both letters did not



indicate when the destruction of the trees occurred. That it was impossible to assess when the alleged damage took place.

5. The Applicant stated that although this court found him guilty of contempt, it never made a finding whether he was served with this court's order dated 6<sup>th</sup> December 2023.
6. Through his written submissions dated 21<sup>st</sup> July 2025, the Applicant submitted that he has not caused any further damages to the Respondent's trees as alleged by the Respondent. That he had always been a civil, respectful and law-abiding citizen. The Applicant further submitted that the Respondent was fixated on punishing him with fabricated claims.
7. It was the Applicant's submission that he was not guilty of contempt of this court's order dated 6<sup>th</sup> December 2023 as he was not personally served with the said order. It was the Applicant's submission that he anchored his application for review on the ground of any other sufficient reason i.e. the circumstances surrounding the service of the court order, the timing of the alleged contemptuous acts and the manner in which the contempt proceedings unfolded. He relied on Order 45 Rule 1 of the Civil Procedure Rules and *The Registered Trustees of the Archdiocese of Dar es Salaam vs Chairman of Bunju Village Government & others*, Civil Appeal No. 47 of 2006.
8. The Applicant submitted that the actions complained of were undertaken during and immediately after the official delimitation of each beneficiary's portion in KERICHO/KAPSIMBIRI/588 and further, that this court had directed the County Surveyor on 16<sup>th</sup> November 2022 to visit the subject property for purposes of surveying and apportioning each beneficiary their rightful share.
9. It was the Applicant's submission that there was no evidence of service of the court order dated 6<sup>th</sup> December 2023 and there was no evidence of the destruction of the trees.

DIVISION -- Response

PARA 10.

Through his Replying Affidavit filed on 13<sup>th</sup> May 2025, the Respondent stated that the Applicant fully participated in the proceedings that led to this court's Ruling on contempt on 12<sup>th</sup> March 2025. That the Applicant was still in contempt despite of the existing Ruling as he caused further damage to his trees.

PARA 11.

It was the Respondent's case that he provided evidence in the form of photographs showing destruction of his trees. That the present Application was vexatious and an abuse of the court process.

PARA 12.

At the time of writing this Ruling, the Respondent had not filed his written submissions.

PARA 13.

I have gone through the record, its pleadings and the Applicant's written submissions dated 21<sup>st</sup> July 2025. The only issue for my determination was whether the Application has met the requirements for a grant of a Review Order.

PARA 14.

It is trite law that the High Court has a power of Review. The law on Review is based on section 80 of the *Civil procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules, 2010. It is salient to note that this court's power must be exercised within this circumscribed legal framework.

PARA 15.



Section 80 of the [Civil Procedure Act](#) provides as follows: -

Any person who considers himself aggrieved-

- (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
- (b) by a decree or order from which no appeal is allowed by this Act, May apply for a review of judgement to the court, which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

PARA 16.

Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

SUBPARA (1)

Any person considering himself aggrieved-

SUBPARA (a)

By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

SUBPARA (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 review of judgement to the court which passed the decree or made the order without unreasonable delay.

PARA 17.

From the above provisions, it is clear that section 80 of the [Civil Procedure Act](#) gives the power of Review while Order 45 of the Civil Procedure Rules 2010, sets out the rules. The rules limit the grounds applicable for Review as follows: -

SUBPARA i.

The discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by him at the time when the Decree was passed or the Order made.

SUBPARA ii.

On account of some mistake or error apparent on the face of the record.

SUBPARA iii.

Any other sufficient reason and that the Application has to be made without unreasonable delay.

PARA 18.

The Supreme Court of India in the case of *Ajit Kumar Rath vs State of Orisa & Others*, 9 Supreme Court Cases 596 stated as follows: -

“ .....the power can be exercised on the application of a person on 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 order was made. The power can also be exercised on



account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression “any other sufficient reason” means a reason sufficiently analogous to those specified in the rule”.

PARA 19.

The Court of Appeal in *Tokesi Mambili and others vs Simion Litsanga* (2004) eKLR held: -

- i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.
- ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion.” (Emphasis mine)

PARA 20.

The Applicant submitted that he anchored his Application on the ground of any other sufficient reason. The Court of Appeal in *Registered Trustees of the Archdiocese of Dar es salaam vs Chairman of Bunju Village Government & Others*, Civil Appeal No. 47 of 2006, observed that: -

“It is difficult to attempt to define the meaning of the words sufficient cause. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the Appellant.”

PARA 21.

The Court of Appeal in *Pancras T. Swai v Kenya Breweries Limited* [2014] KECA 883 (KLR) held that: -

“.....As repeatedly pointed out in various decisions of this Court, the words, “for any sufficient reason” must be viewed in the context firstly of Section 80 of the *Civil Procedure Act*, Cap 21, which confers an unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order.”

PARA 22.

Under this head, the Applicant stated and submitted that he was not personally served with the order dated 6<sup>th</sup> December 2023 that led to the Ruling dated 12<sup>th</sup> March 2025 which found him guilty of contempt. He further stated that there had been no evidence of service in the form of an affidavit of service. The Applicant further stated that it was difficult to tell when the trees were felled as the evidence was inconclusive.

PARA 23.

In its Ruling dated 12<sup>th</sup> March 2025, this court found that the Applicant was aware of the contempt proceedings as his advocate had been present in court and participated in the proceedings. This court rejected the Applicant’s assertion that he had not been personally served. On the issue of the destruction of trees, this court found that the trees had been cut and it relied on photographs produced as “CK 3”, a letter from the Chief produced as “CK 4a” and as Assessment Report produced as “CK 4b”. Further, this court rejected the Respondent’s defence as it was a mere denial.



PARA 24.

In my view, the grounds relied on by the Applicant would be proper grounds for an Appeal rather than a Review. This was stated by the Court of Appeal in *Pancras T. Swai (supra)* where it quoted *National Bank of Kenya Limited v. Ndungu Njau (Civil Appeal No. 211 of 1996 (unreported))* thus: -

“ 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. More 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 ground for review.....

..... the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise we agree that the learned Judge would be sitting in appeal on his own judgment which is not permissible in law. An issue which has been hotly contested as in this case cannot be reviewed by the same Court which had adjudicated upon it.” (Emphasis mine)

PARA 25.

Flowing from the above, it is clear that this court addressed itself sufficiently on the matters raised by the Applicant. Asking for a review on the grounds cited by the Applicants would be akin to be asking this court to sit on appeal on its own decision. It is my finding that the grounds raised by the Applicant are appellate in nature and the same are not allowed in a Review Application. In the case of *Nasibwa Wakenya Moses v University of Nairobi & another [2019] KEHC 11472 (KLR)*, it was held that: -

“ .....The review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is not permissible.”

PARA 26.

Further, the Court of Appeal in *National Bank Of Kenya Limited v Ndungu Njau [1997] KECA 71 (KLR)* held that: -

“In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise we agree that the learned Judge would be sitting in appeal on his own judgment which is not permissible in law.....”

PARA 27.

In the final analysis, having considered the Application in its entirety, I find that the grounds cited by the Applicant did not qualify to be grounds for review to bring the Application within the ambit of the grounds specified in Order 45 Rule 1 of the Civil Procedure Rules. It is my finding that this was not a proper case for the court to grant the review sought. Accordingly, the invitation to review the Ruling dated 10th November 2023 is declined.

PARA 28.



In the end, the Notice of Motion Application dated 28<sup>th</sup> March 2025 has no merit and is dismissed with costs to the Respondent.

**RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 12<sup>TH</sup> DAY OF NOVEMBER, 2025.**

.....

**Hon. JULIUS K. NG'ARNG'AR**

**JUDGE**

Ruling delivered in the presence of:

Siele/Susan (Court Assistants).

Kipkorir for the Applicant

C.Kosgei for the Respondent

