



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
SUCCESSION CAUSE NO. 354 OF 2010

IN THE ESTATE OF FAI AMARIO OMAR ALIAS PETER GILBERT
NJOROGE NG'ANG'A

MASHADI AMARIO ELIOR1st APPLICANT

**ELVIS KAREE AMARIO Suing as a
legal representative of the estate of
the late PENINAH SHINTA WAMBUI MARIO.....2nd APPLICANT**

-VERSUS-

MIKI NG'ANG'A NJOROGE.....1ST RESPONDENT
SHEENA EUSTON AMARIO.....2ND RESPONDENT
JAMES NG'ANG'A KAMAU.....4th RESPONDENT
YURI GILBERT AMARIO.....5th RESPONDENT
DEBBIE AMARIO.....6th RESPONDENT
SALOME WANJIKU MWANGI.....7th RESPONDENT
BERNICE NJERI KAMAU.....8th RESPONDENT
SHEILA WANGARI.....9th RESPONDENT

RULING

Introduction

1. In the continuation of filing of multiple interlocutory Applications, I have before me five Applications, the 1st one being a Notice of Motion dated 3rd July 2024, the 2nd application one being a Notice of Motion dated 13th November 2024, the 3rd Application being a Notice of Motion dated 20th December 2024 the 4th Application being a Certificate of urgency without any Application dated 12th June 2025, the 5th Application being a Notice of Motion dated 30th June 2025.
2. All the listed Applications are filed by the 1st and 2nd Applicants in a flurry that created a confusion resulting in the Applicants lamenting of not being heard and the resultant directions by the court made on the 27th July 2025 that “no other or further interlocutory applications shall be filed without the express leave of the court.
3. The 2nd Applicant equally has a pending Application dated 18th February 2025 seeking recognition as a beneficiary as the legal representative of his deceased mother amongst other relief and the same remains pending and is not subject to this ruling.
4. This court delivered a Ruling dated 20th May 2025 that touched on the aspects of the Applications listed herein before and this ruling is intended to address all the Applications save for the Application dated 18th February 2025.
5. The 1st Application is a Notice of Motion filed pursuant to **Order 45** of the Civil Procedure Rules, by **Marsha Dee Amario** seeking the following relief(s);

- i. SPENT**
 - ii. SPENT**
 - iii. That, this Honorable Court be pleased to set-aside and or vary its orders dated January 31, 2024 which awarded the summons for partial confirmation of grant dated 15th February 2023 as consented pursuant to the agreement to settle dated 20th July 2023.**
 - iv. That, this honorable court be pleased to grant such further orders that it shall deem fit and just.**
 - v. That, the costs of this application be granted.**

6. The Application is premised on the following grounds and is supported by a sworn affidavit: -
 - i. That whereas the applicant also seeks for an order to set aside a ruling granted by this honorable court on 31st January 2024, which awarded the summons for partial confirmation of grant dated 15th February 2023, as consented pursuant to the settlement agreement dated July 20, 2023, her grounds for seeking the setting aside orders are distinct from those advanced by Elvis Karee Amario in his application dated 9th May 2024.*
 - ii. That, it is nonetheless in the interest of justice that this application be consolidated with and heard together with the application dated 9th May 2024 filed by Elvis Karee Amario for purposes of adjudicating in finality the question of setting aside orders given by this honorable court on 31st January 2024.*

iii. *That, the application dated 9th May 2024 filed by Elvis Karee Amario already has a ruling date for 9th July 2024 and it is thus in the interest of justice that this application is placed before the judge as a matter of urgency for purposes of consideration of prayer 2 of this present application.*

iv. *That, the applicant verily believes that the orders issued by this honorable court on 31st January 2024 should be set aside and or varied because:*

a) The settlement agreement dated July 20, 2023 does not list for distribution, at least two of the deceased's assets.

i. Thika plot registered in the name of Fai Amario Limited and

ii. 90% of shares in Fai Amario Limited that the deceased possessed. Resultant of the above error, the deceased's 90% ownership stake in Fai Amario Limited has not been listed to be devolved, additionally, the 1st, 2nd, 3rd and 4th Respondents have taken advantage and have surreptitiously registered a new business called Wonder Water Limited, which is based at the same address as Fai Amario Limited in Naivasha/Mwichiringiri/4/3225. That the aforementioned Respondents have attempted to cease the deceased's company through the back door and are currently misappropriating and misusing the equipment owned by the company.

Moreover, it is additionally un-procedural to proceed with estate distribution without taking the Thika plot into consideration.

b) The eighth respondent isn't the deceased's biological daughter, adopted child, or dependent. *She is a child born out of wedlock to the deceased former wife. In this succession matter, she is wrongly named as a beneficiary of the deceased's estate.*

Furthermore, the high court established that the eighth respondent was not a beneficiary. This is an error that the record's face plainly displays. This error places the eighth respondent in a situation where she could inherit from several estates, thereby enriching herself at the expense of a minor; Hot Gilbert, the deceased's biological child, who has only the deceased to inherit from. In this regard, the administrative task of accurately identifying every individual who is legally entitled to a portion of the estate has been improperly actioned.

c) Some beneficiaries are set to receive an unfairly disproportionate share of the proceeds. *This relates specifically to the former wives who absconded their marriages years ago only to return demanding an inheritance portion as spouses. A ruling previously pronounced by this court towards this settlement was mistakenly not factored; neither*

was consideration given towards the former wives' contribution towards the growth /development of estate vs the damages they elicited during their marital span.

d) A resulting trust in favor for the deceased biological children was not considered and separated from the distributable "free estate".

The deceased continuously informed on his intention to amass wealth to purposefully give his biological children a competitive advantage in this day and age. His testament was wrongfully not captured in the distribution rations drawn.

e) The sale of estate-listed properties was previously granted partial confirmation of grant by the court. *The settlement agreement actioned alluded to a negotiated sale agreement and distribution of sale proceeds. Unfortunately, noncompliance with engagement terms resulted in the termination of the purchaser agreement, to which the consent was referenced. Due to the aforementioned events, the partial grant is inoperable as a result of an unexpressed purchase agreement, whose terms of the engagement were clear and pertinent to the settlement agreement dated July 20, 2023.*

f) Not all beneficiaries agreed to the settlement/consent dated July 20, 2023, which

the court adopted and which directly led to the ruling rendered on January 31, 2024.

- v. *That is in the interest of Justice that this application is allowed to ensure proper administration of the estate of the deceased.*
7. The 2nd Application is a Notice of Motion dated 13th November 2024, filed pursuant to **Article 48** of the Constitution of Kenya, 2010, **Section 47** of the Law of Succession Act, Cap 160 Laws of Kenya, **Section 1A, 1B and 3A** and **75** of the Civil Procedure Act. **Order 51 Rule 1 and 3** of the Civil Procedure Rules 2010 by **Elvis Karee Amario** seeking the following relief
- i. SPENT***
 - ii. That this Honourable Court be pleased to hereby grant the Applicant leave to appeal the ruling delivered by Honourable Justice Muhochi S.M on 8th August 2024 ex-parte.***
 - iii. That the said leave to appeal be hereby deemed to have been granted on the 8th August 2024 upon delivery of the said ruling.***
8. The Application is supported by the annexed affidavit of **Mutanda Moses Musau**, advocate, and founded on the following grounds: -
- i. That this Honourable Court delivered a ruling on 8th August 2024 dismissing the Applicant's application dated 9th May 2024.***
 - ii. That we have since discovered that following delivery of the ruling, the Applicant's Counsel inadvertently forgot to***

orally seek leave to appeal as required in succession matters as per the holding of the Court of Appeal in Rhoda Wairimu Karanja & John Kioi Karanja v Mary Wangui Karanja & Salome Njeri Karanja (Civil Application 69 of 2014) [2014] KECA 255 (KLR) (Civ) (14 November 2014) (Ruling).

- iii. That the said inadvertent mistake of counsel should not be met on the innocent litigant.*
- iv. That the Applicant urgently requires leave to appeal to regularize the already filed appeal before the Court of Appeal at Nakuru, Civil Appeal No. E126 of 2024, which has a pending application for stay of the proceedings before this Honorable Court.*
- v. That, this court has unfettered discretion to grant the said leave ex-parte.*
- vi. That, the Appellant's appeal has grounds that merit serious judicial consideration.*
- vii. That, it is in the best interest of justice that this Honourable Court gives this matter a priority hearing and grants the orders being prayed for.*

9. The 3rd Application being a Notice of Motion dated 20th December 2024 filed pursuant to **Article 48** of the Constitution of Kenya 2010, **Section 47** and **76** of the law of Succession Act Cap 160 Laws of Kenya, **section 1A, 1B, 3A** and **75** of the Civil Procedure Act, **Order 51 rule 1** and **3** of the Civil Procedures Rules 2010 by, by **Marsha Dee Amario** seeking the following relief(s);

- i. SPENT***
 - ii. That the directions verbally given by the Honorable Judge on 12.11.2024 concerning the application dated 03.07.2024, which were not captured in writing, be formally reinstated and a ruling date scheduled for the same.***
 - iii. That the hearing set for 23.01.2025 be vacated as the application under certificate of urgency for leave of court by Mutanda Law Advocates in the appeal case has been marked as withdrawn with no order to costs, thus rendering it unnecessary.***
 - iv. That, any other order that this Honorable Court may deem fit and just to grant in the circumstances.***
10. The Application supported by the annexed affidavit of Marsha Amario and premised on the following grounds:
 - i. That, the Applicant filed an application on 03.07.2024 to revoke the confirmation of grant issued to the estate on the grounds of fraudulent acquisition, false statements, material concealments, and the failure to produce a comprehensive inventory, all of which is essential for ensuring transparency and fairness in the proper distribution of the estate, thereby allowing beneficiaries to understand what assets are available and how they will be allocated.*
 - ii. That, on 8th August, 2024, the court requested the parties to file affidavits in response to the application, and during a mention dated 12th November, .2024, the court further gave verbal directions for all parties to file submissions. Despite*

these verbal pronouncements, the directions were not captured in writing, and subsequent requests for clarification and transcription have not been answered by the court.

- iii. That, the application to the Court of Appeal was heard on 11th December, 2024 without leave of the High Court and the matter is currently marked as withdrawn with*
- iv. no order as to costs. This now renders the application made by Mutanda Law Advocates under a certificate of urgency for leave of the High Court unnecessary, thus, making it prudent to expedite the hearing of the application dated 3rd July, 2024 to prevent further delay in the distribution of the estate.*
- v. That, it is in the interest of justice and to avoid further prejudice to the Applicant and the estate that the court reinstates the verbal directions given on 12th November, 2024 and schedules a ruling date promptly.*
- vi. That, the matter has been pending in court since 2010, and any further delay in addressing the fraudulent acquisition of the confirmation of grant as per the consent dated 21st July, 2023, and the mismanagement of the estate by the 1st administrator, would cause irreparable harm and further injustice to the legitimate beneficiaries.*
- vii. That, the Applicant seeks the court's intervention, considering the provisions of the Law of Succession Act, CAP 160, Laws of Kenya, particularly regarding the revocation of grants obtained fraudulently and the protection of the estate from mismanagement, to ensure that the*

fraudulent acquisition and misrepresentation in the grant process are addressed and rectified.

viii. That, it is in the best interest of justice that this Honorable court gives this matter a priority hearing and grant orders being prayed for.

11. The 4th Application being a Certificate of urgency without any Application dated 12th June 2025, it essentially seeks to reactivate and catalyze the hearing of the 2nd Application.

12. The 5th Application being a Notice of Motion dated 30th June 2025 filed pursuant to **Sections 47, 51 & 76** of the Law of Succession Act; Rule **49** of the Probate and Administration Rules; **Sections 1A, 1B, 3A** of the Civil Procedure Act, Cap 21; **Order 51** of the Civil Procedure Rules;

Articles 47, 48, 50(1) and 159(2)(d) of the Constitution by **Mashadi Amario Elijor**, craving for the following Seventeen (17) orders:

i. That this Honorable Court do permanently disqualify the firm of Messrs. Ndegwa & Ndegwa Advocates from further participation in these proceedings on grounds of conflict of interest, professional contradiction, and ethical breach, as set out in the supporting affidavit.

ii. That the said firm be barred from representing any party in this cause where actual or perceived conflict of interest arises—particularly in matters relating to inclusion or exclusion of the 8th Respondent as a beneficiary.

- iii. That in the alternative, and without prejudice to prayer (1) & (2) above, this Court do issue any further or consequential orders necessary to preserve the integrity of these proceedings, including exclusion of any advocate or firm whose continued participation undermines the fair administration of justice or incites procedural discord.**
- iv. That no party or firm, including Messrs. Ndegwa & Ndegwa Advocates, be permitted to appear or influence proceedings where a substantive conflict of interest remains identified and unremedied.**
- v. That this Honorable Court be pleased to enforce clause 24 of its ruling dated 25th October 2022 by directing the director of Fai Amarillo Limited to remit Kes. 134,000 monthly to the applicant as maintenance, to clear all arrears accrued from March 2021 to date, and to do so within a reasonable time the court shall direct—together with interest and a timeline for compliance.**
- vi. That the Honorable Court do formally acknowledge that its ruling dated 20th May 2025 made no reference to the Applicant's Certificate of Urgency dated 3rd July 2024, and 20th December 2024, which was filed specifically; to expedite consideration on the pending 3rd July 2024 application.**
- vii. That, the Honorable prioritize the determination of the Applicant's applications dated 3rd July 2024, 22nd December 2022 and 20th December 2024 being**

materially interlinked and forming the backbone of unresolved issues in this cause.

- viii. That, due consideration be given to the application dated 22nd December 2022 which remains unheard and is expressly incorporated into the applicant's application dated 3rd July 2024.***
- ix. That, the ruling issued on 31st January 2024 be reviewed and set aside, insofar as it affects the applicant, having been issued against the backdrop of pending application, unconsidered dissent and procedural exclusion.***
- x. That, the Court do issue fresh directions addressing:***
- Equitable and lawful administration of the estate***
 - Misrepresentation or misidentification of beneficiaries***
 - Financial stewardship and tax accountability***
 - Distribution of the estate***
 - Enforcement Clause 24 monthly maintenance order***
 - Valuation of estate assets and directions on assets in banking custody***
 - Institutional conflict within representation***
 - Procedural alignment, including***
 - i. The permanent disqualification of Messrs. Ndegwa & Ndegwa Advocate.***
 - ii. Formal amendment of the Applicant's name in the Court record and in the letters of***

Administration, to reflect Mashadi Amario Elior.

iii. Rectification of the procedural distortion introduced by the 9th respondent in their application dated 12th June 2025, wherein they invoke the Court's ruling of 20th May 2025 as having granted blanket leave—despite the said ruling dealing exclusively with judicial recusal and containing no such extension.

• Realignment of these proceedings to their rightful legal and procedural footing.

- xi. That, the Court directs for equitable distribution of the estate, following settlement of existing obligations including maintenance under Clause 24 and obligations to the estate valuer.**
- xii. That, any ruling arising from the application dated 3rd July 2024—particularly if affecting the 8th and 9th respondents—be framed as to remain enforceable, irrespective of appellate delays, including those introduced by the 9th respondent's applications of 13th November 2024 and 12th June 2025.**
- xiii. That, should the verbally scheduled ruling date of 24th July 2025 not be upheld or published, this Court do issue directions ensuring timely determination of the Applicant's applications, safeguarding the**
- xiv. constitutional right to a fair and expeditious hearing.**

- xv. ***That, directions be issued compelling all counsel to respond to this application within a prescribed window prior to 24th July 2025, and that the ruling thereafter reflect all pending applications collectively or in individual reasoned determinations; AND THAT noting the Court remains functionally active, and the Cause List confirms the availability of the preceding judge without issuance of any formal notice to the contrary, such directions be issued.***
- xvi. ***That, the Honorable Court affirms that the Applicant’s applications, objections and filings be heard and determined on merit, without procedural burial, suppression or omission.***
- xvii. ***That, the Court do amend its record to reflect the Applicant’s correct name: Mashadi Amario Erior, in place of Marsha Dee Amario, with effect on all subsequent proceedings.***
- xviii. ***That, this Honorable Court be pleased to clarify that the ruling delivered on 20.05.2025 was limited in scope to issues surrounding judicial recusal, and did not operate as leave to revive the application fit for pronouncement dated 13th November 2024—thereby preserving the procedural distinction between participation rights and appeal thresholds.***
- xix. ***That, costs of this application be provided for.***

13. The Application is supported by the annexed affidavit of **Marsha Amario** and premised on the following grounds:

- a) *That, the firm of Messrs. Ndegwa & Ndegwa Advocates has previously and concurrently represented parties whose positions are legally and factually opposed—namely Monica Wanjiru, and her daughter Sheila Wangari, the 8th Respondent—thereby creating a disqualifying conflict of interest.*
- b) *That, correspondence authored by the firm on 6th April 2016, explicitly denies the 8th respondent's beneficiary claim, was adopted by the Court in a ruling dated 8th June 2016 and now stands in direct contradiction to the position being advanced by the same firm for her.*
- c) *THAT the Court in paragraph 116 of its ruling of 20th May 2025 provided express procedural allowance:*

“Any plea to disqualify the Advocates for the 9th Respondents by any other Respondent may be argued separately to allow all parties participate.”

This application is procedurally anchored on that invitation and anticipated by the Court.

- d) *THAT the said conflict is institutional. Replacing individual advocates within the firm does not cure the prejudice already occasioned nor does it restore public confidence in the fieriness of these proceedings.*
- e) *THAT the Honorable Court possesses inherent powers under section 3A of the Civil Procedures Act and is bound by Articles 48 and 50(1) of the constitution to safeguard access to justice,*

ethical conduct and impartial hearing. Permitting this firm's continued participation amounts to approbation and reprobation, destabilizing both the legal integrity and moral coherence of these proceedings.

- f) THAT the 31st January 2024 ruling having been rendered while a prior, duly served application was pending and without consideration of the Applicant's written objections thereby violating principles of equal access and due process.*
- g) THAT the Applicant's Application dated 3rd July 2024 remains fully filed, served and procedurally ripe for determination—with the response window having been formally closed by the Court during the 12th of November 2024 Court mention. Any attempt by opposing parties to introduce new arguments or rebuttals under the pretext of this application should be deemed procedurally impermissible and prejudicial.*
- h) THAT continued silence on the Applicant's fully compliant Applications amounts to constructive exclusion and risks material injustice— especially in the presence of an estate marred by misrepresentation, conflicting claims, financial burdens and outstanding tax implications with the potential to be placed on innocent people.*
- i) THAT the Honorable Court's cause list for July reflects continued judicial availability, and no notice of judicial absence has been issued to justify non-listing of this matter. Unless the Court intervenes, unresolved matters will continue to entangle this Estate in compounding delay, procedural distortion, confusion and ethical uncertainty.*

j) THAT it is in the overriding interest of justice, equity and proper administration of the deceased estate that this application be allowed, so as to conclude prolonged procedural ambiguity, uphold the rule of law, and restore confidence in the integrity of this Succession Cause.

14. This Court had directed that the parties file generic written submissions on all five pending applications as alleged.

1st Applicant's Case

15. The 1st Applicant in her 1st written submissions dated 28th February 2025 opposes the 2nd Applicant's Application dated 18th February 2025 submitting that she filed a replying affidavit dated 27th February 2025 which she relies upon and in a nutshell has replied as follows –

- a) The applicant has engaged in persistent and unlawful attempts to be recognized as a beneficiary, including presenting a falsified birth certificate and identity fraud.*
- b) Penina Wambui Karuga was legally divorced from the deceased about ten years before his passing, invalidating her claims as a surviving spouse. The applicant has used various fraudulent identities for his mother to assert beneficiary claims.*
- c) The applicant's mother did not depend on him financially post-divorce, supporting her exclusion as a beneficiary.*
- d) The applicant's claim of a polygamous relationship is baseless, as the deceased was monogamous and had only one recognized wife, a widow who later remarried.*

- e) *The estate of the late Fai Amario only has his seven biological children as rightful heirs*
- f) *The applicant has shared a document guaranteeing compensation for losses due to breach of duty by the administrators, capped at Kes. 5,000,000. I am confident that this application does not indicate any breach of duty, so no collection will be necessary.*
- g) *It's imperative to address the limitations of the guarantee provided due to significant financial mismanagement by one of the administrators, who has incurred a debt of Kes.405,182,759.12 million in 4 years and taken proceeds from the estate over the past 14 years.*

16. The 1st Applicant refines the following four (4) issues for consideration to include;

- i. Whether the 2nd Applicant is a beneficiary of the deceased estate and ought to be included in the list of the beneficiaries.***
- ii. Who are the legitimate beneficiaries to the Amario estate?***
- iii. Addressing the limitations of the guarantee provided.***
- iv. What encompasses fair distribution of the estate***

17. On the 1st issue as to whether the 2nd Applicant is a beneficiary of the deceased estate and ought to include in the list of the beneficiaries. The 1st applicant submits that the 2nd Applicant has argued that:

- That his late mother who survived the polygamous deceased man was bound to inherit, as a unit of the deceased family. As such, he is entitled to inherit his late mother's share being the only beneficiary and dependent who survived her.

18. That the 2nd applicant has presented inconsistent and fraudulent documentation to assert beneficiary claims. Given the evidence of identity fraud and the legal divorce of **Penina Wambui Karuga** from the deceased, the applicant's claims are unfounded.

19. That despite knowing the administration's expressions of divorce, the applicant failed to rebut or challenge this information, highlighting the inability to substantiate his claims and the fraudulent nature of his assertions.

20. That this position is reiterated by learned Justice D. Majanja in the case of **Evans Otieno Nyakwana v Cleophas Bwana Ongaro [2015] eKLR**, when he stated:

“As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue.”

21. That Similarly, in **Ratilal Patel v Lalji Makanji [1957] EAR 314-317**, it was emphasized:

“There is one observation which we must make – burden of proof— standard of proof required allegations of fraud must be strictly proved, although that standard of proof may not be so heavy as to require proof beyond

reasonable doubt. Something more than a balance of probabilities is required.”

22. The 2nd applicant has not met the standard of proof to support his beneficiary claims. The legal burden of proof lies with the claimant, underscored by the inconsistency and fraudulent nature of the documentation presented.

23. On the 2nd issue as to who are the legitimate beneficiaries to the Amario estate? the 1st Applicant contends that the deceased's statements in various articles, and video evidence of his widow's remarriage provide concrete proof of termination of marriages. This evidence supports excluding all parties, except the deceased's 7 biological children from the list of beneficiaries. Additional evidence, such as burial arrangements and letters of administration, further wholesomely corroborates the deceased's divorced status. When asked to respond to the application dated 3rd July, 2024, none of the relevant parties provided a rebuttal.

24. Reliance is placed on the Court of Appeal in the case of **Mbuthia Macharia v Annah Mutua & another [2017] eKLR** where they discussed the burden of proof and stated thus:

“The legal burden is discharged by way of evidence, with the opposing party having a corresponding duty of adducing evidence in rebuttal. This constitutes evidential burden.”

- a. Sheila Wangare is not a child of the intestate, nor a beneficiary as confirmed by the High Court order dated 9th June 2016 by Justice A.K Ndungu. Her biological mother was remarried, and when the opportunity presented itself for 6 months in 2024, there was no rebuttal to this fact.
 - b. Salome Mwangi is not a rightful beneficiary of the Amario estate. She failed to present rebuttal evidence during the 6-month opportunity in 2024. Additionally, an article where the deceased clearly states his divorced position supports her exclusion.
 - c. Bernice Kamau is not a rightful beneficiary of the Amario estate. She did not provide rebuttal evidence years ago, nor respond in 2024. Additionally, there is documented evidence of the deceased's statements regarding their divorced status.
25. With regard to **Bernice Kamau**, the 1st Applicant additionally rely on the findings of Lady Justice Theresia Matheka in the ruling in **Re Estate of Fai Amario (Deceased) [2020] eKLR** where she observed that: "In response, the 2nd respondent swore an affidavit to the effect that the applicant (Bernice) had remarried and, in any event, before the deceased died, he had filed for divorce in Milimani Chief Magistrate Court; **Divorce Cause No 198 of 2008.**"

"These averments were not responded to by the applicant. i.e. as to whether she had remarried after the deceased had died, and whether, she had been

divorced as at the time of the passing of the deceased.”

26. In all matters of succession regarding an “implied surviving spouse,” I rely on the opinion of Lord Upjohn at **page 989, paragraphs E, F, G,** which comprehensively states the law:

“In the first place, the beneficial ownership of the property in question must depend upon the agreement of the parties determined at the time of acquisition. If the property in question is land there must be some lease or conveyance which shows how it was acquired. If that document declares not merely in whom the beneficial title is to rest, that necessarily concludes the question of title as between the spouses for all time and in the absence of fraud or mistake at the time of transaction, the parties cannot go behind it at any time[thereafter even on death or the break-up of the marriage.”

27. Additionally, **Lord Morris of Borth-Y-Gest** said at page 975 paragraph H, comprehensively and more lucidly states the law thus:

“One of the main purposes of the Act of 1882 was to make it fully possible for the property rights of parties to the marriage to be kept entirely separate. There was no suggestion that the status of marriage was to result in any common ownership or co-ownership of property. All this, in my view, negatives any idea that section 17 was designed for the purpose of enabling the court to pass property rights from one spouse to another.”

28. Reference is made to the celebrated case of **Echaria**, which states that a spouse does not acquire any beneficial interest in matrimonial property merely by being married. Specific contribution must be ascertained to entitle a spouse to a share of the property. The court noted that each case should be independently assessed to determine contribution.

iii. Addressing the limitations of the guarantee provided: -

That in light of the significant financial mismanagement by one of the administrators, who has incurred the estate a debt of Kes. 405,182,759.12 million in 4 years and has taken proceeds from the estate in its entirety for the past 14 years, it is imperative to address the limitations of the guarantee provided.

29. The 1st Applicant relies on **Gladys Nkirotem'itunga Vs. Julius Majaum'itunga [2016] eKLR** that Whereas the law of succession does not define what intermeddling with the property of the deceased is, there is ample judicial decisions on acts which may amount to intermeddling. For instances, in the case of **Benson Mutumamuriungi Vs. C.E.O. Kenya Police Sacco & Another [2016] eKLR** the court observed that:

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging,

receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the Law of Succession Act. I should add that any act or acts which will dissipate or diminish or put at risk the free property of the deceased are also acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the Law of Succession Act. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.”

30. Additionally, Peter Gilbert Njoroge Ng’ang’a a.k.a. Fai Omar Amario (Deceased) [2021] eKLR where this honorable court observed:

“It is also not in dispute that the respondent is currently running Fai Amarillo Limited, in which he owns 10%, and the deceased 90%, and this is a going concern. He has not disputed the fact that he earns a salary of up to Kes. 2 million per month from the company. He has not laid before the court any evidence of what he is doing with the 90% parts of the deceased’s estate’s share of the income from that company.”

31. On the 4th issue as to what encompasses fair distribution of the estate?

The 1st Applicant contends that, fair distribution of the estate involves ensuring that all beneficiaries receive their rightful shares, and any issues of mismanagement, fraud, or undue benefit by any party are addressed justly.

32. She proposes the following considerations and actions can help achieve this:

- Tax Debt Accountability: The responsible administrator should solely bear the tax debt, ensuring other beneficiaries are not unfairly burdened.
- Misappropriated Funds Accountability: Hold the administrator accountable for embezzled funds beyond Kes. 5 million, by redistributing some of his "land" inheritance to all the affected siblings.
- Reclaiming Manufacturing Elements: Ensure all manufacturing elements in Fai Amarillo Limited are considered company assets, not the administrator's, to prevent further financial harm and allow shareholders to resume production when they deem fit.
- Debenture Responsibility: Charge the director who applied for the debenture with its responsibility, exempting other beneficiaries from liabilities they were not privy to.
- Missing Title Deeds & misaligned values: Assign all liability attached to the "factory" property to the individual responsible,

and return the title deed to the Estate. As the sole objector to the valuation report, she should be exempt from selecting properties with identified valuation inconsistencies.

- Court Order to Banks: Secure a court order to instruct banks to disclose any assets they hold in custody for the estate, including title deeds.
 - Green Card Search: Conduct a green card search on estate properties to secure the beneficiaries' inheritance and prevent entanglement in property thefts.
33. The 1st Applicant concedes that the court only allow prayer 4 of the application 18th February 2025. That the evidence presented demonstrates that the applicant has failed to meet the required standard of proof to substantiate his claims, and the legitimate beneficiaries of the Amario estate are the deceased's seven (7) biological children.
34. Addressing issues of mismanagement and ensuring equitable distribution of the estate is crucial for upholding justice she prays for the court's intervention to secure the beneficiaries' inheritance and enforce accountability on the responsible administrator.
35. The 1st Applicant further submits in her written submissions dated 25th September 2025 that her comprehensive submissions were filed on 28th February 2025, equally an affidavit in response to the Application dated 27th February 2025, addressing all substantive matters arising from the claim.

36. That, Additionally, proof of service to all parties in this succession matter was made, dated 5th March 2025. These supplementary submissions are filed in compliance with the Court's directive and are intended to reinforce the principles of lawful, transparent, and equitable administration of the estate.
37. That her submissions of 28th February 2025 fully addressed the merits of the Applicant's claims.
38. It is submitted that the truth stands on its own and requires no concealment. The 2nd Applicant has presented no additional evidence to challenge the prior submissions, which remain complete, accurate and fully reflective of the application at hand.
39. That it remains the 2nd Applicant's legal burden to prove entitlement as a beneficiary, in accordance with established jurisprudence: [See.]
- **Evans Otieno Nyakwana v Cleophas Bwana Ongaro [2015] eKLR .**
 - **Ratilal Patel v Lalji Makanji [1957] EAR 314-317**
 - **Mbuthia Macharia v Annah Mutua & another [2017] eKLR**
40. That she continues to act diligently and in good faith, in addition to making timely filings. She reinforces the following;
- a) Beneficiary Status: The Applicant has failed to provide credible evidence of entitlement. His claims remain inconsistent and unsupported by documentary evidence. Only the seven biological children of the deceased are rightful beneficiaries.

b) Limitations of the Guarantee: The Applicant's guarantee is insufficient in light of significant financial mismanagement by one of the administrators, amounting to Kes. 405,182,759.12 over four years. Judicial precedent confirms the Court's authority to enforce accountability: **Gladys Nkirotem'itunga v Julius Majaum'itunga [2016] eKLR; Benson Mutumamuriungi v C.E.O. Kenya Police SACCO & Another [2016] eKLR:**

Fair Distribution of the Estate: Distribution must ensure equitable allocation among rightful beneficiaries, protect estate assets against intermeddling or unauthorized claims, and hold administrators accountable for mismanagement or improper appropriation of estate resources.

41. That the following are her Key considerations:
- i. The return of the 900 shares belonging to the deceased in Fai Amarillo Limited, and the dismissal of the additional shareholders fraudulently added;
 - ii. Tax debt accountability;
 - iii. Thika plot;
 - iv. Misappropriated funds recompense, and or reclaimed by land assets set to be inherited by offender;
 - v. Reclaiming estate-owned business assets; in the name of the going concern;
 - vi. Assigning responsibility for debentures and misaligned property valuations;

- vii. Securing title deeds and bank-held estate assets e.g. title deeds;
 - viii. Conducting a Green Card search for estate properties;
 - ix. Restore proper administration and enforce compliance with prior Court orders;
42. The 1st Applicant further submits that;
- a) *Impact of Delay: Any postponement in ruling on the application prolongs uncertainty for legitimate beneficiaries and may exacerbate mismanagement risks.*
 - b) *Clarification on Applicant Conduct: Persistent attempts by the Applicant to assert claims based on falsified documents underscore the need for strict adherence to evidential requirements and the burden of proof.*
 - c) *Equitable Remedy: Court intervention is essential to safeguard the estate, ensure lawful distribution, and maintain the integrity of administration.*
43. That her submissions filed on 28th February 2025, reinforced by the principles outlined above, comprehensively address all substantive issues in the Applicant's application. It is respectfully prayed that the Honourable Court:
- i. *Uphold the principles of lawful succession and rightful beneficiary status;*
 - ii. *Dismiss any unsubstantiated claims.*

- iii. Restore full control of the estate to proper administration, and ensure accountability for any acts of intermeddling, mismanagement, or concealment of estate assets.*

2nd Applicant Case

44. 2nd Applicant in his written submissions dated 6th August 2025 is in Support of the Application dated 13th November 2024.
45. That all the Respondents save for **Marsha Dee Amario**, have informed the court that they are not opposed to the said application as they stand not to suffer prejudice if the application is allowed.
46. It is common ground that courts in ordinary practice would grant the said leave to appeal automatically upon delivering verdicts or on oral application by counsel after the court delivers a verdict.
47. In this instance the court did not automatically grant the said leave and neither did the counsel on record request for it orally. Upon establishing this, the Applicant instructed his counsel on record to make a formal application for leave. This is the application before the court for determination.
48. That, it is common ground that the application was made within a reasonable time upon the Applicant instructing his counsel on record to appeal the decision of the court. The said inadvertent mistake of counsel should not be met on an innocent litigant.

49. That it is further common ground that the decision that the appellant seeks to appeal against originated from this court as the court of first original jurisdiction. The appeal against this decision lies upon the Court of Appeal and the said appeal warrants judicial consideration.
50. Additionally, it is common ground that the Applicant filed a Notice of Appeal and a Memorandum of Appeal within time. The said Notice of Appeal is dated 21st August 2024 whereas the Memorandum of Appeal is dated 6th September 2024.
51. That the grounds on the said memorandum of appeal make the appeal arguable, all the other Respondents are not opposed to the application.
52. That the 1st Applicant, **Marsha Dee Amario** has not demonstrated the prejudice she stands to suffer if the said leave is granted, in any event she will have a right of audience before the Court of Appeal if she wishes to oppose the said appeal on merit.
53. Reliance is made to the case of In re **Estate of Ahmedali Abdul Hussein Mamujee (Deceased) (Succession Cause 234 of 2013) [2023] KEHC 23293 (KLR) (29 September 2023) (Ruling)** where learned Justice Gregory Mutai held as follows;-

“The Court rendered its decision on 12th May 2023. The Notice of Appeal was filed on 22nd May 2023. That I have read the draft Memorandum of Appeal. That the proposed appeal is arguable.”

54. That, in **Rhoda Wairimu Karanja and another v Mary Wangui Karanja & another [2014] eKLR** the Court of Appeal stated:-

“ ... leave to appeal will normally be granted where prima facie it appears that there are grounds which merit serious judicial consideration.”

The proposed appeal meets this test. In the result, I allow prayer 4 of the said motion.”

It is for this reason that the 2nd Applicant prays that the Application dated 13th November 2024 be allowed as prayed.

The 1st Respondents case

55. In his replying affidavit dated 17th April 2025 the 1st Respondent opposes the Application deposing that, the facts and matters deposed to are derived partly from his own knowledge and partly from information and advice received from his Advocates **Messrs. Robson Harris Advocates** LLP and to the extent that any statement made herein is based on information or belief, he has disclosed hereunder the source or ground (as the case may be) of such information or belief and he verily believe the same to be true.

56. That, he had read and understood and where necessary had explained to me by his Advocates the meaning and import of the Applicant's Notice of Motion dated 25th February, 2025 together with the Affidavit sworn by **Brian Patrick Ochieng** in support of the said Application on the even date and filed under Certificate of Urgency on 25th February, 2025.

57. That, from the foregoing, the Applicant's instant Application is not only misconceived but also impotent, bad in law, full of misrepresentations and heavily laden with material non-disclosure of facts and tantamount to an abuse of the judicial process.
58. That, the Applicant had sought vide a Notice of Motion Application dated 9th May, 2024 seeking to be recognized as a beneficiary in the estate of the deceased for being a biological son of the deceased.
59. That, upon consideration of the Application and submissions by Counsel for the respective parties, this Honourable Court found that the Applicant was not entitled to benefit from the estate of the deceased as he was not a biological son.
60. That, further, the circumstances leading to the deceased meeting the Applicant's biological mother was pursuant to a newspaper advertisement which was placed eight (8) years after the birth of the Applicant.
61. That, further, the 2nd Applicant filed an Application under **Rule 5 (2)(b)** in the Court of Appeal seeking to appeal against the decision of this Honourable Court vide Notice of Motion Application dated 9th September, 2024, which appeal was withdrawn by consent of the Parties herein on 11th December, 2024 on the basis that the Appellant had not sought leave to appeal from the Honourable Court.
62. That, concurrently, the Applicant herein had filed a Notice of Motion Application dated 13th November, 2024 seeking leave from the High Court to appeal to the Court of Appeal against the Ruling delivered by

this Honourable Court on 8th August, 2024, which application was not opposed by the parties.

63. That, on apprehension that the appeal might not succeed, the Applicant mischievously filed a Notice of Motion Application dated 18th February, 2025 seeking *inter alia* to recognize the Applicant's deceased mother as a wife of the deceased and thereby entitled to inherit from the estate absolutely.
64. That, the foregoing has given rise to the instant Application for the Honourable Judge to recuse himself, which Application he object by virtue that, it is clear from the foregoing that the Applicant's intention is to inherit from the estate by whatever means necessary.
65. That, further, the instant Application is a clear indication of an Applicant who is in business of forum shopping seeking to derail the conclusion of the distribution of the deceased's estate, noting that this suit has been long-standing since 2010.
66. That, in any event, the Applicant is keen on pursuing an appeal against this Honourable Court's Ruling delivered on 8th August, 2024.
67. That, as it is, noting the aforementioned Ruling of this Honourable Court, the Applicant herein is not a beneficiary to the estate of the deceased and therefore has no locus in this matter.
68. That, allegations that the Honourable Judge will be biased and should therefore recuse himself are unsubstantiated as the Honourable Court addressed itself on the same in its Ruling delivered on 8th August, 2024.

69. That the issues raised in the Ruling will be addressed by the Court of Appeal and the Appellate court is vested with the authority to make any necessary orders.
70. That it is not disputed that there is no stay of the proceedings before this Honourable Court and this matter should therefore proceed to its logical conclusion.
71. That, he is advised by his advocates on record, that for recusal to succeed, the Applicant ought to have demonstrated bias against them and that, the Applicant has also not demonstrated that the Honourable Judge has a pecuniary interest in the matter as was stated in **Uhuru Highway Development Ltd v Central Bank of Kenya & 2 Others**.
72. That, in any event, he is advised by his advocates on record which advice he believe to be verily true, that the instant application is not objective but based on mere paranoia that the Applicant's pending applications may be dismissed.
73. That, the instant Application and Notice of Motion Application dated 18th February, 2025 in their entirety are fatally defective and it is clear that its sole purpose is to frustrate the progress of this matter.
74. That, on the whole, on a consideration of the facts and the law he verily believes that the Applicant's Application dated 25th February, 2025 lacks in merit, is mischievous and a clear abuse of the Court process and the same ought to be dismissed with costs.

1st Administrators Case

75. 1st Administrator/Respondent generically responds the myriad Applications filed by the 1st Applicant, **Mashadi Amario** and 2nd Applicant, **Elvis Karee** on various dates.
76. That, the 1st Administrator/Respondent wishes to place reliance on the comprehensive Replying Affidavit sworn on 11th September, 2025 as well as well-established case laws and pronouncements made by this Court.
77. In relation to the 1st Applicant's, Applications the 1st Respondent contends are made by frivolous and vexatious litigants with the aim of frustrating a smooth succession process of the Estate of the **Late Peter Gilbert Njoroge** by frustrating the 1st Administrator/Respondent who has continuously incurred cost in the numerous attempts and/or efforts he has made in protecting the Estate's vulnerable property and keeping the deceased Company as a going concern.
78. That, the 1st Application dated 20th December, 2022 is revived by an indolent Applicant, the Application seeks numerous orders but of legal impact is seeking an order to bar the 1st Administrator/Respondent from engaging and or operating Fai Amarillo Limited (hereinafter referred to as the Company).
79. That, it is not disputed that the 1st Administrator/1st Respondent is not only a beneficiary of the Estate but also a Director with the highest number of shares in the said company. That prayer, is thus simply absurd.

80. That, secondly, vide an Application dated 3rd July, 2024, the 1st Applicant, seeks to review the decision rendered by this Honourable Court adopting the Consent dated 23rd July, 2023, which was arrived at following numerous negotiation and guidance by this Honourable Court and the same was confirmed vide the Ruling of 30th January, 2024.
81. That, the stubbornness nature of the Applicant, was equally captured in the Ruling, noting that out of all the beneficiaries, she is the only one that raised objection to the said consent and thus did not sign.
82. That, re-litigating facts in the said Application, is contrary to well established principle of *Res-judicata*.
83. That, this Applicant further filed an Application dated 30th June, 2025 raising eighteen (18) prayers, inter alia an order for the 1st Administrator/Respondent to pay Kshs. 134,000.00 monthly maintenances to the Applicant.
84. Despite the willingness by the 1st Respondent to comply with the said order, the Applicant has frustrated the Respondent's such good intent due to the unwillingness to allow the partial distribution of the Estate as per the ruling of 30th January, 2024.
85. With regards to the 2nd Applicant, **Mr. Elvis Karee**, Applications seeks to be recognized as beneficiary of the Estate by whatever means necessary.

86. That, for context, this Applicant is had initially approached this Honourable Court to be recognized as a biological child of the deceased, which Application was dismissed.
87. That, subsequently the said Ruling has been appealed and awaiting case management at the Court of Appeal.
88. Interestingly, the Applicant now wants to be recognized as a beneficiary on allegations that the Applicant's mother was the deceased's wife at the time of his death.
89. It is the 1st Respondent's submission that the mischief is very evident he refines the following issues for consideration.
90. That, from the facts enumerated and the comprehensive 1st Administrator/Respondent's Replying Affidavit, the following issues are ripe for determination.
- i. Whether the Applications dated 20th December, 2022, 3rd July, 2024 and 30th June, 2025 filed by Mashadi Amario are merited?*
 - ii. Whether the Application dated 18th February, 2025 by Elvis Karee is merited?*
 - iii. Whether cost should be awarded to the 1st Administrator/Respondent?*
91. With regards to the 1st issue as to whether the Applications dated 22nd December, 2022, 3rd July, 2024 and 30th June, 2025 filed by **Mashadi**

Amario are merited? It is submitted that they are devoid of any merit and thus should be dismissed.

92. As for the Application dated 22nd December 2020, in summary, seeks to bar and/or further prohibit the 1st Administrator/Respondent from dealing with any property registered under Fai Amarillo Limited, to which seemingly, belonged solely to the deceased, even from the annexures submitted by the 1st Applicant, clearly shows that the 1st Administrator/Respondent is a co-director of Fai Amarillo Limited prior to the deceased death.
93. That, it is trite law and a one of the objectives of Company Law under **Section 2** of the **Companies Act, Cap. 486**, that a company has a separate legal personality with perpetual succession. A principle that a company continues to exist as a going concern despite the death, insolvency, or change in membership of its members or shareholders.
94. Reference is made to the case of **Machika v Okal & 3 others [2023] KEHC 18301 (KLR)**; the Court held that:
- "Business is carried out in various forms, as a sole proprietorship, a partnership or a limited liability company. As a sole proprietorship, the assets relating to the business, such as the premises and any plant or equipment, belong to the sole proprietor. Survivors of the deceased cannot access such assets, unless they obtain representation to the estate of the sole proprietor, so that the assets are vested in them by dint of section 79 of the Law of Succession Act, Cap 160, Laws of Kenya***

If the business runs as a partnership, the assets would be owned by the partners, proportionate to the shares held by each partner in the partnership. Upon the demise of a partner, the share due to him vests in the personal representative, who would then be entitled to call for the deceased's share. Of course, upon the death of a partner, the partnership ought to be dissolved, and accounts taken of the shares, and whatever is due to the dead partner becomes payable to his personal representative.

If the business runs under a limited liability company, the estate of the dead shareholder would only be entitled to the value of his shares in the company, but not to the business or assets of the company."

95. Further reference is made to the case of **Romana Chepkemboi Yego & Anor vs. Jane Njuguna & Anor [2017] eKLR**, where it was held that:

"...it is now settled law that a duly incorporated company is a separate and distinct legal entity different from its shareholders and directors. This is why it has perpetual succession and has the power to acquire property in its own name...in this case, the certificates of lease annexed to the 1st petitioner's supporting affidavit conclusively proves that the suit prop...company and have since furnished the Applicant with the contacts of the Company's Auditor to verify any information."

96. The 1st Respondent submits that, this Application should be dismissed.
97. With regards to the Application dated 3rd July, 2024, that it seeks to review the Ruling delivered on 31st January, 2024 is unmerited and should be dismissed.
98. That the Learned Judge in Kenya Power & Lighting Company Limited & another v Zakayo Saitoti Naingola & another [2019] KEHC 8529 (KLR) reiterated **Section 80** of the Civil Procedure Act provides for the principle and grounds for review 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 judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit."***

99. Further, the Court proceeded as follows: -

"Order 45 of the Civil Procedure Rules reiterates the power of the court to review its judgments or orders but proceeds to specify the circumstances under which the court may exercise its power of review. Order 45 Rule 1 (b) expressly

provides that a court can review its judgment or order if an applicant satisfies any of the following conditions:

(1) That he has discovered new evidence which after the exercise of due diligence it was not within his knowledge or it was not available at the time the order was made

2) That there was a mistake or error apparent on the face of the record, and

(3) That there is sufficient reason to warrant the review sought and that the application had been made timeously.

100. The 1st Respondent quotes Kuloba J (as he then was) in **Lakesteel Supplies vs. Dr. Badia and Anor Kisumu HCCC No. 191 of 1994**, cited with approval in **Moruri (Suing for and on behalf of the Estate of Truphena Abisa Moruri) Neangena Hospital & another [2025] KEHC 12473 (KLR)** while dismissing the Application stated as follows:

"The exercise of review entails a judicial re-examination, that is to say, a reconsideration, and a second view or examination, and a consideration for purposes of correction of a decree or order on a former occasion. And one procures such examination and correction, alteration or reversal of a former position for any of the reasons set out above. The court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in Order 44 rule 1. of the Civil Procedure Rules. A review is by no means an appeal in disguise

wherein an erroneous decision is reheard and corrected, but lies only for patent error. It can only lie if one of the grounds is shown, one cannot elaborately go into evidence again and then reverse the decree or order as that would be acting without jurisdiction, and to be sitting in appeal. The object is not to enable a judge to rewrite a second judgement or ruling because the first one is wrong...

On an application for review, the court is to see whether any evident error or omission needs correction or is otherwise a requisite for ends of justice. The power, which inhere in every court of plenary jurisdiction, is exercised to prevent miscarriage of justice or to correct grave and palpable errors. It is a discretionary power.

In the present application it has not been said or even suggested that after the passing of the order sought to be reviewed, there is a discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the ruling was made."

101. That, in the case of Dock Workers Union & 2 others v Attorney General & another Kenya Ports Authority & 4 others Interested Party) [2019] eKLR it was therefore held that: -

"In this regard, for a Court to revise its own orders, it must be demonstrated that there is discovery of new and important matter or evidence. It must also be shown that the new evidence was not within the knowledge of the

party seeking review or could not be produced at the time the orders were made. Such party must also satisfy the Court that this was the case even after exercise of due diligence. A Court will also review its orders if it is demonstrated that there is some mistake or error apparent on the face of the record, or for any other sufficient reason. The error must be evident on the face of the record and should not require much labour in explanation, An application for review must also be made without unreasonable delay."

Analysis and Determination

102. I have scrutinized all the pleadings and it is apparent that notwithstanding a crowded field by litigants in this succession, only the 1st administrator, the 3rd administrator and Evis Karee Amario were actively involved.

103. The 1st and 3rd Administrator have included submissions relating to the Application dated 18th February 2025, which submissions are not considered herein and shall be considered at the appropriate time.

104. The issues crystalizing at hand include,

- i. If there is merit in the 1st Application
- ii. If there is Merit in the 2nd Application
- iii. If there is merit in the 3rd Application and
- iv. if there is merit in the 5th Application

105. From a legal stand point the question is, has a case been made out to warrant setting-aside a consent order;

106. That **Order 45 Rule 1** of the Civil Procedure Rules permit a review of a judgment or order where there is discovery of new and important matter or evidence which, despite due diligence, was not within the applicant's knowledge or could not be produced at the time the decree was passed or the order made.

107. In **Rose Kaiza v. Angelo Mpanju Kaiza [2009] KECA 422**, the Court held:

“An application for review under Order 44 rule 1 must be clear and specific on the basis upon which it is made. The motion before the Superior Court was based on the discovery of new facts. However, it is not every new fact which will qualify for interference with the judgement or decree sought to be reviewed. In the words of the rule itself, it is “.... 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.....”. Applications on this ground must be treated with great caution and as required by rule 4(2)(b) the Court must be satisfied that the materials placed before it in accordance with the formalities of the law do prove the existence of the facts alleged. Before a review is allowed on the ground of discovery of new evidence, it must be proved that the applicant had acted with due diligence and the existence of the evidence was not within his knowledge; where review was sought for on the ground of discovery of new evidence

but it was found that the petitioner had not acted with due diligence, it is not open to the Court to admit evidence on the ground of sufficient cause.

108. No credible case has been made to warrant the setting-aside and or varying the courts orders dated January 31, 2024 which awarded the summons for partial confirmation of grant dated 15th February 2023 as consented pursuant to the agreement to settle dated 20th July 2023.
109. A consent order can only be set aside on demonstrable fraud, collusion or that parties lacked material facts when the said consent was entered or the same as entered contravenes public policy, none of which is showcased.
110. The omission of certain assets of the deceased is no basis for setting aside and the 1st Applicant is now an administrator she may move the court appropriately to include such omitted assets.
111. The Alleged eighth respondent not being the deceased's biological daughter, adopted child, or dependent cannot arise after consent by parties and this alleged issue is not one that can cause a setting aside of a consent order.
112. Any aspects of alleged inequality in distribution can be canvassed when finally confirming the grant.
113. With regards to 2nd Application dated 13th November 2024, while the same was largely unopposed save for the 1st Applicant/3rd

Administrator who has failed to showcase the prejudice she stands to suffer should this party be allowed to file an appeal.

114. However, this court is unpersuaded on the potential success or arguability of the appeal before the court of Appeal, but would allow parties in highly emotive and old succession matters that constitute a backlog to try their chances in a second forum. Under such circumstances, such a party would be urged to obtain stay before the court of Appeal.
115. In the 2nd Application, the Applicant rushed to the Court of Appeal without leave of the court and now appear to invite this court to validate his unlawful conduct by sanitizing his notice of appeal and any other pleadings he might have filed.
116. This court considers pleadings filed without leave as a nullity that cannot be cured. The Applicant shall have to file his Appeal afresh without reference to any previous unlawful filings.
117. I am inclined to allow the same to allow this party ventilate his case at a different forum. Being as it may that this party now dons two hats concurrently with an existing pending Application dated 18th February 2025 will be expected to prosecute his Application immediately.
118. The 3rd Application was overtaken by events but the parties elected to still subject it to the court. The application needs no adjudication and this court thus declines to grant any of the reliefs ought.
119. Has basis for disqualification of an advocate been established?

120. With regards to the 5th Application which essentially the 1st Applicant/3rd Administrator seeks the disqualification of **Ndegwa Njiru Advocate** on the basis of conflict of interest

121. **Rule 8** of the Advocates (Practice) Rules provides that -

“No advocate may appear as such before any court or tribunal in any matter in which he has reason to believe that he may be required as a witness to give evidence, whether verbally or by declaration or affidavit; and if, while appearing in any matter, it becomes apparent that he will be required as a witness to give evidence whether verbally or by declaration or affidavit, he shall not continue to appear:

Provided that this rule does not prevent an advocate from giving evidence whether verbally or by declaration or affidavit on formal or non-contentious matter of fact in any matter in which he acts or appears”

122. The Court in the case of **Charles Gitonga Kariuki v Akuisi Farmers Co. Ltd [2007] eKLR** dealt with the subject of conflict of interest and held that -

“The fact that an advocate acted for a litigant does not, per se, lead to a situation of conflict of interest. The applicant was required to establish, and present to the court evidence that would persuade the court to reach a conclusion that indeed there was a possibility that a

conflict of interest would arise where the advocate is allowed to act for the opposing party against such a litigant”

123. Conflict of interest has been defined in the **Law Society of Kenya Code of Standards of Professional Practice and Ethical Conduct, 2016** a hereunder -

“A conflicting interest is an interest which gives rise to substantial risk that the Advocate’s representation of the client will be materially and adversely affected by the Advocate’s own interests or by the Advocate’s duties to another current client, former client or a third person.”

124. Rule 6 paragraph 99 of the said Code provides for instances where conflict of interest might arise to include -

“(a) Where the interests of one client are directly adverse to those of another client being represented by the Advocate or the firm, for instance in situations where the representation involves the assertion of a claim by one client against another client;

(b) Where the nature or scope of representation of one client will be materially limited by the Advocate’s responsibilities to another client, a former client, a third person or by the personal interests of the Advocate; and

(c) Where in the course of representing a client there is a risk of using, wittingly or unwittingly, information obtained

from a current or former client to the disadvantage of that other client or former client.”

125. The Court in the case of **Murgor & Murgor Advocates v Kenya Pipeline Co. Ltd [2021] eKLR** in dismissing an application similar to the present one set out the general principles guiding the disqualification of Advocates from appearing for a client in a matter as hereunder -

“(i) The basis upon which a Court disqualifies an Advocate from acting arises from the need to protect the interests of administration of justice. Whereas it is understood that choice of Counsel is an entitlement of a party, such Counsel must always bear in mind that he/she becomes an officer of the Court and as such owes an allegiance to a higher cause (justice and truth) than serving the interests of the client;

(ii) Disqualification of an Advocate is only desirable in contentious matters and where there is or was an Advocate-Client relationship;

(iii) It must be apparent that the Advocate sought to be disqualified will be required as a witness to give evidence in the matter;

(iv) It is desirable that when the principle of confidentiality in an Advocate/Client fiduciary relationship will be prejudiced or where there is a possibility of real conflict of

interest, then an Advocate sought to be disqualified ceases to appear in the matter;

(v) The fact that an Advocate acted for a litigant does not, per se, lead to a situation of conflict of interest;

(vi) Conflict of interest is an issue of fact which must be proved by way of evidence; and

(vii) It is not a requirement that in a situation where a firm of Advocates acted for the opposite party all the Advocates in the firm be disqualified from the matter. In such an instance, only the Advocates who are in possession of confidential information relevant to the matters in issue before Court or Tribunal may be called upon to cease from appearing in the matter.”

126. Each case must turn on its own facts to establish whether real mischief and real prejudice will result. In this case, we hardly have any facts to consider in arriving at such conclusion. The two parties that have been represented by this advocate or his law firm at different times have neither complained nor participated in these proceedings, Advocate **Ndegwa Njiru** did not participate. The 1st Applicant/3rd Administrator has not in any way demonstrated the prejudice to be occasioned upon her or **Monica Wanjiru** or **Sheila Wangari**.

127. This Court is unpersuaded that the continued representation by Advocate Ndegwa or his law firm shall occasion any party herein to prejudice.

128. All other spurious prayers in the nature of directing this court are declined. Parties shall abide by the directions formulated by the court and not the parties.
129. Seeking enforcement if a reasonable provision order made on the 25th October 2021 with regards Kshs. 134,000 monthly, the court confirms the same to be valid, the Applicant was not specific what she wanted the court to do but she may explore enforcement measure against the 1st Administrator.
130. Owing to the foregoing I am inclined to find that
- i. The 1st Application dated 3rd July 2024, is without merit and the same is dismissed with costs to the Respondents who participated.**
 - ii. The 2nd Application dated 13th November 2024, is without merit and the same is dismissed with costs to the Respondents who participated.**
 - iii. The 3rd Application dated 20th December 2024, is allowed on conditional terms.**
 - iv. The 4th Application dated 12th June 2025, is without merit and the same is dismissed with no cost's orders.**
 - v. The 5th Application being a Notice of Motion dated 30th June 2025, is without merit and the same is dismissed with costs to the Respondents who participated.**

131. The 2nd Applicant shall file a fresh Notice of Appeal and institute a fresh Appeal before the Court of Appeal within the next thirty (30) Days.
132. Any party Aggrieved by this ruling, has leave to move to the Court of Appeal within the next 45 days which period shall serve as stay (if any).
133. The Court shall proceed to fix a ruling date for the summons for revocation of grant Application dated 18th February 2025.

It is So Ordered.

**Signed, Dated and Delivered at Nakuru
on this 21st Day of November 2025.**

**Mohochi S. M.
Judge**

Quorum:

1. **Mr. Mutanda & Mr. Ochieng** of Mutanda Law Advocates for the Applicant
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2. **Ms Odongo & Mr. Ochieng** of Robson Harris & Co. Advocates, for the 1st Respondent
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3. **Ms, Mwai and Mr. Wairegi** of Wairegi Kiarie & Associates
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4. **Mashadi Amario Elior** -Appearing in person

5. **Ms. Karanja** Holding Brief for Ms. Kinuthia- Murugi Kariuki & Co. Advocates, for Bernice Njeri
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