

**REPUBLIC OF KENYA**  
**IN THE MAGISTRATE’S COURT AT NAROK**  
**HCFA NO. E001 OF 2023**  
**(CORAM: CHARLES KARIUKI – J)**

*(Being an Appeal against the Ruling and Orders of Hon. George Sagero – SRM in Narok  
Chief Magistrate Court Succession Cause No. 85 of 2018 delivered on <sup>the third</sup> day of July, 2023)*

**IN THE MATTER OF THE ESTATE OF KIRUTITI ARAP TUIYA Alias  
KIRUTIT TUIYA CHEBORGE (DECEASED)**

**EVALINE TUIYA.....APPELLANT**  
**-VRS-**  
**CHEPKEMOI NEBO ARAP TUIYA.....1<sup>ST</sup> PLAINTIFF**  
**RICHARD KIPROTICH LANGAT.....2<sup>ND</sup> PLAINTIFF**

**RULING**

1. The Appellant filed two applications: one dated 2/8/2021 for temporary relief and another dated the same day for the revocation of grants.
2. On 22/11/2021, directions were given for canvassing the application via submissions.
3. On 22/8/22, parties who had filed submissions were given a Ruling date fixed for 26/9/2022. On the date above, the court dismissed the application to revoke the grant. The court said nothing about the application for interim relief. The Submissions by the Applicant, now Appellant, were clearly on an application for interim relief pending the hearing of the application for revocation of the grant.

4. Subsequently, the Applicant lodged an application dated 14/12/2022 seeking review of the Ruling/Order issued in the impugned decision. The Applicant/Appellant, via submissions dated 13/4/2023, explained the error, and the same application was disposed of via a Ruling of 3/7/2023.
5. The court's decision to dismiss the review application indicates that the grounds did not meet the necessary threshold and thus ruling effectively concluding the matter on review, clarifying the court's stance on the application for review.
  - a) Being aggrieved by the said ruling, filed appeal and set out grounds which, would be summarised as follows; **Was the application for review meritorious in terms of satisfying the grounds for review?**
  - b) **and Costs.**
6. Under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules. The court has discretionary powers to review its own decisions. The grounds for review are:
  - i. *Discovery of new and important evidence.*
  - ii. *Mistake or error on the face of the record.*
  - iii. *Any other sufficient reason.*
  - iv. *Application be filed without any unreasonable delay*
7. . The core ground of the application before the trial court was anchored on the error on the record, which occasioned injustice. The complaint by the appellant is that, despite the appellant's submissions manifestly

indicating the application which was being canvassed, the court went ahead to rule on the wrong application, not the one heard, thereby occasioning injustice.

8. In the *National Bank of Kenya vrs Ndungu Njau (1997) e KLR*, the court held: "*the error or omission on record must be self-evident on the part of the court and should not require elaborate argument in order to be established.*". Also, in *Mayodi vrs ICDC (2006) IEA 243*, the court held that a clear case of error of omission should be apparent, not one that would require an elaborate argument.
9. In an instant case, the error was very manifest. The application heard was one for temporary relief pending the hearing of the application for revocation on grounds. The court ought to have seen such an obvious mistake. The Appellant's submission showed clearly the application which was canvassed.
10. The court after carefully reviewing the record of the trial court, recognizing its role as a first appellate court, and found that the trial court failed to appreciate the matter properly in terms of the application which was canvassed. This demonstrates the court's failure in commitment to do justice and fairness and reassuring parties of its impartiality. Thus, the court makes the orders.

**(1) The appeal is allowed and the court orders that the case is hereby remitted to the Chief Magistrate's Court for re-hearing by any**

**other magistrate, excluding Hon. George Sagero, to promote impartiality and fairness in the subsequent proceedings.**

**(2) Parties will bear their own costs, acknowledging their respective roles and ensuring fairness in the proceedings, which maintains mutual respect and responsibility.**

**DATED AND DELIVERED AT NAROK VIA MICROSOFT TEAMS THIS  
28<sup>TH</sup> DAY OF NOVEMBER, 2025**

.....

**CHARLES KARIUKI  
JUDGE**