



**In re Estate of Julius Cheruiyot Ngeno (Deceased) (Succession Cause
3 of 2019) [2025] KEHC 18349 (KLR) (15 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18349 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE 3 OF 2019
JK NG'ARNG'AR, J
DECEMBER 15, 2025**

IN THE MATTER OF THE ESTATE OF JULIUS CHERUIYOT NGENO (DECEASED)

BETWEEN

DAVID KIMUTAI CHERUIYOT 1ST PETITIONER

DAVIS KIPRONO CHERUIYOT 2ND PETITIONER

AND

MARTIN KIBET CHERUIYOT 1ST PROTESTOR

JUNE CHEPKEMOI 2ND PROTESTOR

RULING

1. Davis Kiprono Cheruiyot (the 2nd Petitioner) petitioned for Letters of Administration Intestate of the estate of Julius Cheruiyot Ngeno (deceased) through a Petition dated 29th January 2019.
2. The Grant of Letters of Administration Intestate of the estate of the deceased was issued by this court on 2nd July 2019 to the Petitioner, Davis Kiprono Cheruiyot. David Kimutai Cheruiyot (1st Petitioner) and Raymond Cheruiyot sought to have the Grant revoked through the Summons for Revocation dated 8th November 2019.
3. In its Ruling dated 10th November 2023, this court revoked the Grant and ordered the same to be re-issued in the joint names of David Kimutai Cheruiyot and Davis Kiprono Rotich who represented the 1st and 2nd households respectively.
4. Through a Notice of Motion Application dated 11th December 2023, David Kimutai Cheruiyot (1st Petitioner) and Raymond Cheruiyot sought to this court review its Ruling dated 10th November 2023. Through its Ruling dated 28th January 2025, this court declined to review its Ruling and dismissed the Application.



5. Through a Notice of Motion Application dated 3rd April 2025, Davis Kiprono Cheruiyot (2nd Petitioner) sought the following orders: -
- i. Spent.
 - ii. That pending the distribution of the estate, the Honourable Court be pleased to grant an order that the administrators herein, David Kimutai Cheruiyot and Davis Kiprono Cheruiyot do within 14 days from the date of issuance of this order, open a joint bank account in a reputable commercial bank in Kenya for purposes of collecting the monetary proceeds of the estate of the deceased herein.
 - iii. That pending the distribution of the estate, the Honourable Court be pleased to grant an order to Kapset Tea Factory Co. Ltd to manage all the tea on land parcel numbers Kericho/ Kimulot/146, 147 & 11 by offering farm management services, by collecting all the tea proceeds, by paying the labourers, cater for the transport for the tea to the factory, deduct their charges and deposit the net proceeds in the joint bank account held by the two administrators.
 - iv. That in the alternative, that pending the distribution of the estate, the Honourable Court be pleased to grant an order that all KTDA proceeds emanating from James Finlay Outgrowers, rent net income from Plot No. 35 and 1 Kimulot market and any share of proceeds/rental income from Soi and other buildings in Kericho town, all proceeds from Sacco, shares at Konoin, Kimbilio Daima Sacco and shares at K-Pillar Sacco Society Limited and dividends due to the estate of Julius Cheruiyot Ngeno, be channelled/deposited to the joint bank account held by the two administrators in a reputable commercial Bank in Kenya.
 - v. That this court be pleased to make any further or such further orders as it may deem fit and just to grant.
 - vi. That costs of this application be in the cause.
6. In its Ruling dated 3rd July 2025, this court allowed the Application and ordered that: -
- i. That pending the distribution of the estate, an order is issued that within 14 days of this date, the administrators, David Kimutai Cheruiyot and Davis Kiprono Cheruiyot open an interest earning account in their joint names in a reputable commercial bank for the purpose of collecting the monetary proceeds emanating from James Finlay Outgrowers, rent net income from Plot No. 35 and 1 Kimulot market and any share of proceeds/rental income from Soi and other buildings in Kericho town, all proceeds from Sacco shares at Konoin, Kimbilio Daima Sacco and shares at K-Pillar Sacco Society Limited and dividend due to the estate of Julius Cheruiyot Ngeno.
 - ii. The joint administrators shall file in this court a full and accurate inventory of the estate of the deceased.
 - iii. The joint administrators shall file in this court the necessary steps towards agreeing on the mode of distribution and bringing summons for confirmation of the Grant already issued.

Present Application

7. Martin Kibet and Jane Chepkemoi (Protestors) filed an Application for revocation of the Grant. The Application was dated 15th July 2025 and it sought the following orders: -



- i. That pending the hearing and determination of this Application, this Honourable Court be pleased to stay the orders issued on 3rd July 2025 directing the Petitioner and the 1st Objector to open a joint account within fourteen (14) days.
 - ii. That the Grant of Letters of Administration issued to the Petitioners on 15th November 2023 be revoked and/or annulled.
 - iii. That this Honourable Court be pleased to vary and/or set aside the Ruling delivered on 10th November 2023.
 - iv. That this Honourable Court be pleased to set aside the Ruling delivered on 3rd July 2025.
 - v. That the instant succession cause being Bomet Succession Cause Number 3 of 2019 be dismissed with costs.
8. Through his Supporting Affidavit dated 15th July 2025, the 1st Protestor stated that he was the son of the deceased and the 2nd Protestor was the deceased's daughter. That the deceased was the registered owner of Kericho/kimulot/146. Kericho/Kimulot/147 and Kericho/Kimulot/11. The 1st Protestor further stated that the 1st Petitioner filed the instant succession secretly and failed to involve them.
 9. It was the 1st Protestor's case that the deceased's Death Certificate Number xxxxxxxxx issued on 16th April 2020 was procured fraudulently as the information contained in the said Death Certificate did not relate to the deceased. That on 21st May 2025, the County Civil Registrar Kericho issued a letter stating that the said Death Certificate was invalid. It was the 1st Protestor's further case that on 13th May 2025, the Sub-county Civil Registrar issued a letter confirming the validity of the Death Certificate Number xxxxxxxxx.
 10. The 1st Protestor stated that the 1st Petitioner's act was misleading and that the subsequent Rulings of this court delivered on 10th November 2023 and 3rd July 2025 ought to be reviewed.
 11. Through their written submissions dated 19th September 2025, the Protestors submitted that they had not sought to revoke the Grant thus there was no issue of res judicata. The Protestors further submitted that the Petitioners did not include all the beneficiaries in the instant succession cause.
 12. It was the Protestors' submission that the Petitioners relied on a fraudulent Death Certificate and that amounted to the fraudulent acquisition of the Grant. That the Petitioners' Death Certificate Number xxxxxx was not issued by the Registrar of Death Kericho as the deceased's death happened outside their jurisdiction and was thus not valid. It was the Protestors' further submission that the deceased died at Aga Khan Hospital and their Death Certificate Number xxxxxxx was the genuine Death Certificate and had not been challenged.
 13. The Protestors submitted that they were entitled to the orders they sought as they had demonstrated by way of evidence that the Death Certificate used by the Petitioners was obtained fraudulently. That since the said Death Certificate was obtained fraudulently, the subsequent proceedings were defective and the entire succession cause ought to be dismissed.
 14. Through their supplementary written submissions dated 17th November 2025, the Protestors submitted that their Application called for the investigation of the Death Certificate Number xxxxxx. That succession proceedings are premised and grounded on Death Certificates. He relied on sections 16, 19 and 22 of the *Births and Deaths Registration Act*.



Response

15. Through his Replying Affidavit dated 18th August 2025, the 2nd Petitioner stated that the Protestors have come back to this court with a second prayer for review on the same ground that they had advanced in their Application dated 11th December 2023. That in their earlier Application, they had sought review on the ground that the court had failed to address the validity of the Death Certificate produced in court. The 2nd Petitioner further stated that this court delivered a Ruling and stated that if the Protestors were dissatisfied with the findings of the court, the proper remedy for the Protestor would be to appeal the Ruling.
16. It was the 2nd Petitioner's case that the instant Application was res judicata and relied on section 7 of the *Civil Procedure Act*. It was the 2nd Petitioner's further case that the Protestors did not plead the issue of fraud or raise it in the trial court but raised it in the submissions stage. That all parties were bound by their pleadings. Reliance was placed on sections 107-112 of the *Evidence Act*.
17. The 2nd Petitioner stated that this court cannot sit on Appeal on its own Rulings. That the Protestors' Application was an afterthought and an abuse of the court process. The 2nd Petitioner further stated that litigation had to come to an end.
18. Through his written submissions dated 3rd November 2025, the 2nd Petitioner submitted that the present Application was res judicata and that there had to be an end to litigation. He relied on *Uhuru Highway Development Limited v Central Bank of Kenya & 2 others* [1996] KECA 102 (KLR) and *Njangu vs Wambugu & another* Nairobi HCCC No. 2340 of 1991 (unreported).
19. It was the 2nd Petitioner's submission that a party was bound by their pleadings. That the Protestors did not plead the issue of fraud of the Death Certificate in the trial court but only raised it in their submissions. He relied on *G.P Jani Properties Limited vs Dar es Salaam City Council* (1966) EA 281, *Mwavula v Waweru t/a Antique Auctioneers Agencies & Another* [2024] KEHC 5988 (KLR) et.al. It was the 2nd Petitioner's further submission that the present Application was devoid of any merit as the issue of the forged Death Certificate was an afterthought.
20. The 2nd Petitioner submitted that the present Application had not met the threshold for revocation of the Grant as envisioned under section 76 of the *Law of Succession Act*.
21. I have gone through the entire record, the Notice of Motion Application dated 15th July 2025, the Replying Affidavit dated 18th August 2025, the Petitioners' written submissions dated 3rd November 2025 and the Protestors written submissions dated 19th September 2025 and 17th November 2025. The two issues that I have sieved for my determination are: -
 - i. Whether this court should review and set aside its Rulings dated 10th November 2023 and 3rd July 2025.
 - ii. Whether the Application has met the threshold for revoking the Grant as envisioned in section 76 of the *Law of Succession Act*.

i. Whether this court should review and set aside its Rulings dated 10th November 2023 and 3rd July 2025.

22. The Protestors' main ground for seeking a review of this court's Rulings dated 10th November 2023 and 3rd July 2025 was the alleged use of a forged or fraudulent Death Certificate by the Petitioners during the Petition for Letters of Administration of the deceased's estate.



23. 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.

24. 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.

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

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

26. 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: -

- 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.
- ii. On account of some mistake or error apparent on the face of the record.
- iii. Any other sufficient reason and that the Application has to be made without unreasonable delay.

27. Regarding this court's Ruling dated 10th November 2023, the Petitioners argued that the matter was res judicata as this court had already addressed the issue of the Death Certificates. On the other hand, the Protestors argued that it was not res judicata as they were not the Protestors in the impugned Ruling.

28. Section 7 of the [Civil Procedure Act](#) provides that: -

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.



29. The Court of Appeal in *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] KECA 477 (KLR) held that: -

“The rule or doctrine of *res judicata* serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and common sensical (sic!) protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute or calumny. The foundations of *res judicata* thus rest in the public interest for swift, sure and certain justice.”

30. In this matter, the 1st Petitioner (then 1st Objector) filed a Notice of Motion Application on 13th December 2023 seeking to review this court’s Ruling dated 10th November 2023. One of his grounds was that the court had failed to address the validity of the Death Certificates that were produced in court. He further stated that there were two sets of Death Certificates that were produced in court. In its Ruling dated 28th January 2025, this court ruled that if the 1st Petitioner (then 1st Objector) was not satisfied with this court’s interpretation of the evidence regarding the issue of the Death Certificates, the proper route would be to appeal the Ruling.

31. From the above, it is clear that this court was cognizant of the issue of the Death Certificates and dealt with the issue. The impugned Ruling was clear that a Review was not the proper channel to challenge this court’s Ruling. The parties may not have been the same but the issue in contention or the ground relied upon in the prayer for Review was similar to the ground contained in the earlier Application filed on 13th December 2023. The same was litigated under this court under the same title.

32. In my view, this matter was dealt with finality by this court and it is an abuse of the court process for this court to be asked again to review its Ruling on the same ground that it had declined an earlier Application for Review. I agree with the Petitioners that litigation must come to an end. It is my finding therefore that the prayer for Review of this court’s Ruling dated 10th November 2023 was *res judicata* and could not issue.

33. The Protestors asked this court to Review its Ruling dated 3rd July 2025. I have listed the grounds that a party must establish to merit a Review Order earlier on in this Ruling. I have gone through the record carefully and I find no such evidence adduced by the Protestors. They failed to demonstrate the discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the Protestors. They also failed to demonstrate a mistake or an apparent error on the face of the record. It is my finding therefore that the Protestors did not merit the Review Order in regards to the Ruling dated 3rd July 2025.

ii. Whether the Application has met the threshold for revoking the Grant as envisioned in section 76 of the *Law of Succession Act*.

34. The law on revocation of Grants is provided for in Section 76 of the *Law of Succession Act* which states that: -

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion-

(a) that the proceedings to obtain the grant were defective in substance;



- (b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;
- (c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;
- (d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-
 - (i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or
 - (ii) to proceed diligently with the administration of the estate; or
 - (iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or
- (e) that the grant has become useless and inoperative through subsequent circumstances.

35. It was clear therefore that the grounds upon which a grant may be revoked or annulled are statutory and it was incumbent upon any party making an application for revocation or annulment of a grant to demonstrate the existence of any, some or all the above grounds.
36. The Protestors stated that the whole process was tainted as the Death Certificate that were used by the Petitioners was acquired fraudulently. As I have found earlier in this Ruling, the issue of the two Death Certificates was res judicata and the Protestors no longer had audience in this court regarding the same issue. The issue had already been dealt with earlier by this court. Accordingly, this ground fails. May I add that a Death Certificate only signifies or confirms the fact of death, a fact which was uncontested in this case.
37. The Protestors further stated that the Petitioners initiated the succession proceedings in secrecy and failed to include them as beneficiaries of the deceased's estate. I have gone through the proceedings and I have noted that the current proceedings went through the normal procedural steps including gazettelement before the Grant was issued. Gazettelement was a public notice and it invited any objections to the issuance of Grant within 30 days of the gazettelement. There were no objections. It is my finding therefore that the Petitioners acted within the law and could not be accused of initiating the proceedings in secrecy.
38. On the ground of the Petitioners failing to include them as beneficiaries of the deceased's estate, the Protestors bore the burden of proving that they were dependants or beneficiaries of the deceased as envisioned under section 29 of the *Law of Succession Act*. The Protestors failed to prove that they were beneficiaries of the deceased's estate thus failed to discharge their burden of proof. This ground accordingly fails.
39. Flowing from the above, it is my finding that the Protestors did not satisfy the grounds for revocation of the Grant as per section 76 of the *Law of Succession Act*.



40. As I pen off, it is salient to note that the completion of this matter has been pegged back by numerous Applications, including the present one. I reiterate that if a party is dissatisfied with this court's Ruling, the proper route would be to the Court of Appeal.

41. In the end, the Notice of Motion Application dated 15th July 2025 has no merit and is dismissed. The Protestors are to bear the costs of this Application.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 15TH DAY OF DECEMBER, 2025.

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Hon. JULIUS K. NG'ARNG'AR

JUDGE

Ruling delivered in the presence of:

Siele/Susan (Court Assistants).

Ms. Kiget for Petitioners

Mr. Kiamba for Respondent/Protestor

