



**In re Estate of David Oduor Odhiambo - Deceased (Miscellaneous Succession Application E003 of 2024) [2025] KEHC 18775 (KLR) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18775 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KISUMU**

**MISCELLANEOUS SUCCESSION APPLICATION E003 OF 2024**

**A MABEYA, J**

**DECEMBER 19, 2025**

**IN THE MATTER OF THE ESTATE OF DAVID ODUOR ODHIAMBO – DECEASED**

**IN THE MATTER OF**

**PETRONILA AKINYI ODONDE ..... PETITIONER**

**RULING**

1. The applicant Petronilla Akinyi Odonde, moved this court by her application for a limited grant of representation ad colligenda bona dated 5/2/2024 seeking orders that she be allowed to withdraw from the deceased's Bank account number 11XXXX88 at KCB Kisumu Branch the sum of Kshs. 3,000,000 to cover the deceased's funeral expenses, the fees for their daughter admitted at an American University and to settle debts arising from supplies to the business which the deceased was operating.
2. In a ruling delivered on the 7/2/2024, Aburili J declined to allow the withdrawal of any monies for burial expenses and or settling of debts of the deceased's business but allowed the Grant of Letters of Administration ad colligenda bona for withdrawal of Kshs. 1,500,000/- for payment of school fees to their daughter's university.
3. Vide an application dated 19/11/2025, the applicant moved this Court seeking a review of the orders delivered on the 7/2/2024 by Aburili J. to reopen the file and allow her to access Bank account number 11XXXX88 at KCB Kisumu Branch and withdraw Kshs. 1,500,000/- to cater for the school fees and up-keep of her daughter who studies in the United States of America.
4. The application is grounded on the grounds set out therein as well as the applicant's supporting affidavit sworn on the even date. The applicant deposed that she has catered for the upkeep and school fees of her daughter but is now unable to do so and thus left with the only recourse of pursuing the deceased's accounts. That all beneficiaries have consented to her application and as such the court ought to grant the prayers sought.



5. Review of decisions of a probate Court is governed by Rule 63 of the Probate and Administration Rules, which provides as follows: -

“63. Application of Civil Procedure Rules and High Court (Practice and Procedure) Rules(1)Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.(2)Subject to the provisions of the Act and of these Rules and of any amendments thereto the practice and procedure in all matters arising thereunder in relation to intestate and testamentary succession and the administration of estates of deceased persons shall be those existing and in force immediately prior to the coming into operation of these Rules.”

6. In *John Mundia Njoroge & 9 Others v Cecilia Muthoni Njoroge & Another* [2016] eKLR, the court cited Rule 63 of the Probate and Administration Rules, and then stated as follows: -

“As stated above, the only provisions of the Civil Procedure Rules imported to the *Law of Succession Act* are orders dealing with service of summons, interrogatories, discoveries, inspection, consolidation of suits, summoning and attending witnesses, affidavits, review and computation of time. Clearly, Order 45 relating to review is one of the Civil Procedure Rules imported into succession practice by rule 63 of the Probate and Administration Rules. An application for review in succession proceedings can be brought by a party to the proceedings, a beneficiary to the estate or any interested party. However, the application must meet the substantive requirements of an application brought for review set out in Order 45 of the Civil Procedure Rules.”

7. It is, therefore, clear that any party seeking review of orders, in a probate and succession matter, is bound by the provisions of Order 45 of the Civil Procedure Rules.

8. The substantive provisions of Order 45, state as follows:

“1.

(1) Any person considering himself aggrieved—

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

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or



order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) ...”

9. Order 45 provides for three circumstances under which an order for review can be made. To be successful, an applicant must demonstrate to the Court that there has been 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. Secondly, if he can demonstrate to the Court that there has been some mistake or error apparent on the face of the record. The third ground for review is for any other sufficient reason.
10. In the present case, the applicant has not demonstrated that there has been discovery of new matter or evidence which was not within her knowledge at the time the ruling was made by the court on the contrary the applicant sought the same order to have access to the deceased’s accounts to enable her settle school fees.
11. Further, the applicant has not demonstrated that there was some mistake or error apparent on the face of the record to warrant review or that there is sufficient cause to necessitate review of the orders made by Aburili J on the 7/2/2024.
12. More importantly, such limited grants are made as a stop gap to help in emergencies pending the application for a full grant. It is now over a year since the limited grant was made and no steps have been taken to apply for the full grant. Indeed, there was no explanation whatsoever why the applicant had not applied for a full grant. Had there been such pending application, nothing would have prevented this Court from making appropriate orders therein. In the circumstances, the present application is but an abuse of the court process.
13. In the upshot, the applicant has utterly failed to provide sufficient grounds to justify grant of the orders sought in the Motion application, dated 19/11/2025, and the same is hereby dismissed.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 19<sup>TH</sup> DAY OF DECEMBER, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

