



REPUBLIC OF KENYA



In re Estate of the Late Andrea Chebos Maiyo (Deceased) (Succession Cause 281 of 2006) [2026] KEHC 32 (KLR) (15 January 2026) (Ruling)

Neutral citation: [2026] KEHC 32 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 281 OF 2006
RN NYAKUNDI, J
JANUARY 15, 2026**

IN THE MATTER OF THE ESTATE OF THE LATE ANDREA CHEBOS MAIYO (DECEASED)

BETWEEN

PERIS KOBILO MAIYO APPLICANT

AND

DINAH METO RESPONDENT

RULING

1. What is pending before this Honourable Court for determination is a Notice of Motion Application dated 24th September 2025 premised under sections 40, 42 and 66 of the *Law of Succession Act*, Rules 40, 41 and 73 of the Probate & Administration Rules, Order 45 & Order 9 rule 9 of the Civil Procedure Rules, Section 3A of the *Civil Procedure Act* and Article 159(2)(d) of *the Constitution* in which the Applicant is seeking the following orders: -
 - a. Spent
 - b. Leave be and is hereby granted to the firm of JK Kaptich & Associates Advocates, to come on record for the Applicant in place of the firm of Muhatia Pala & Associates Advocates.
 - c. That there be an interim order of stay of execution and operation of the Ruling/Judgment delivered on 2nd September 2025 and the Certificate of Confirmed Grant and all consequential orders, pending the hearing and determination of this Application.
 - d. That pending the hearing and determination of this Application, the Administrators, the Land Registrar, Trans Nzoia County Government, their servants, agents and/or assigns be restrained from subdividing, transferring, alienating, charging, evicting or in any other manner interfering with the property comprising the Estate of the late Andrea Chebo Maiyo, including the parcel known as Kipsombe Farm measuring 89 acres, or any portion thereof.



- e. That the Summons for Confirmation of Grant filed on 22nd September 2025 together with the proposed mode of distribution be and is hereby stayed and/or set aside, pending the hearing and determination of this Application.
 - f. That this Honourable Court be pleased to review, vary, and/or set aside the Ruling/Judgment delivered on 2nd September 2025 on grounds that:
 - a. There is an error apparent on the face of the record
 - b. There exists fresh and important evidence which, despite exercise of due diligence, was not available and could not be produced at the hearing.
 - g. That the costs of this Application be provided for.
2. The Application is premised on the following grounds and the annexed;
- a. That the Court delivered its Ruling/Judgment on 2nd September 2025 distributing the estate of the deceased between the two houses.
 - b. That after the judgment was issued, the firm of Muhatia Pala & Associates Advocates has gone ahead and filed summons for confirmation of grant dated 22nd September 2025 without the consent of the 2nd family.
 - c. That particularly, the Applicant and her household have not consented at all to 1.5 Acres in Kipsombe Farm being apportioned to the firm of Muhatia Pala & Associates Advocates.
 - d. That the Summons filed have therefore been filed unilaterally by the said firm without any express instructions from the Applicant and her household.
 - e. That the Applicant is aggrieved by the decision of 2nd September 2025, which contains errors apparent on the face of the record and fails to take into account critical evidence and applicable statutory provisions under Sections 40 and 42 of the *Law of Succession Act*.
 - f. That the Respondents have since filed Summons for Confirmation of Grant together with a mode of distribution that is manifestly prejudicial to the Applicant and her family (2nd house).
 - g. That unless this Honourable Court intervenes, the Administrators and Land Registrar may proceed with subdivision, transfer and registration of the estate, and/or evict the Applicant and her family, which would render nugatory both this Application and the Applicant's right of review as advanced in the instant application.
 - h. That the Applicant has since obtained fresh and material evidence not available at the time of hearing, despite exercise of due diligence, which materially affects the just determination of the matter.
 - i. That the balance of convenience and justice dictates that the status quo be preserved pending determination of this Application.
 - j. That no prejudice will be suffered by the Respondents if the orders sought are granted, whereas the Applicant and her family stand to suffer irreparable harm.
 - k. That this Court has jurisdiction under Rule 73 of the Probate & Administration Rules, Order 45 CPR, and its inherent powers to grant the orders sought.



3. The Application is supported by the annexed affidavit dated 24th September 2025 sworn by Peris Kobilu Maiyo, the Applicant herein who deponed as follows: -
- a. That I am the Applicant herein hence competent to swear this affidavit in support of the Application herein.
 - b. That this Court delivered its Ruling/Judgment on 2nd September 2025 distributing the estate of the deceased between the two houses.
 - c. That after the judgment was issued, the firm of Muhatia Pala & Associates Advocates has gone ahead and filed summons for confirmation of grant dated 22nd September 2025 without the consent of the 2nd family.
 - d. That particularly, myself and my household have not consented at all to 1.5 Acres in Kipsombe Farm being apportioned to the firm of Muhatia Pala & Associates Advocates as indicated in the proposed mode of distribution.
 - e. That the Summons filed have therefore been filed unilaterally by the said firm without any express instructions from myself and my children.
 - f. That I am aggrieved by the decision of 2nd September 2025, which contains errors apparent on the face of the record and fails to take into account critical evidence and applicable statutory provisions under Sections 40 and 42 of the [Law of Succession Act](#).
 - g. That the said firm has since filed Summons for Confirmation of Grant together with a mode of distribution that is manifestly prejudicial to myself and my family (2nd house).
 - h. That unless this Honourable Court intervenes, the Administrators and Land Registrar may proceed with subdivision, transfer and registration of the estate, and/or evict me and my family, which would render nugatory both this Application and my right of review as advanced in the instant application.
 - i. That I have since obtained fresh and material evidence not available at the time of hearing, despite exercise of due diligence, which materially affects the just determination of the matter.
 - j. That the balance of convenience and justice dictates that the status quo be preserved pending determination of this Application.
 - k. That no prejudice will be suffered by the Respondents if the orders sought are granted, whereas myself and my family stand to suffer irreparable harm.
 - l. That if undisturbed, the summons for confirmation of grant dated 22nd September 2025 has the effect of evicting me and my family from the piece of land that we have built, planted and made extensive developments thereon.
 - m. That the distribution as filed does not take into consideration the topography of the piece of land. There is every possibility that some beneficiaries will benefit from amore arable part and more commercially beneficial as against the others.



Responses to the Application

Grounds of Opposition

4. The Application is opposed vide Grounds of Opposition dated 6th October 2025 by the beneficiaries of the 1st and 2nd households through their advocates on record coached on the following grounds: -
 - a. That the application dated 22nd September, 2025, challenging the Ruling delivered on 2nd September, 2025 and the mode of distribution adopted therein, is incompetent, misconceived, frivolous, vexatious, scandalous, and amounts to an abuse of the court process.
 - b. That the matter was conclusively determined by the Honourable Court pursuant to Section 40(1) of the *Law of Succession Act*, Cap 160, Laws of Kenya, following protracted litigation and intra-family disputes dating back to 2006 and therefore the court is functus officio.
 - c. That the administration of the estate was finalized upon issuance of the confirmed grant on 2nd September, 2025 and the Administrator lacks legal capacity to re-litigate or introduce new counsel to raise issues that were not previously canvassed before the court or she failed to disclose to the court if any existed.
 - d. That the incoming advocate lacks locus standi to seek leave to come on record in a matter that has been conclusively determined. Any aggrieved party ought to pursue appellate or review remedies as provided under the Civil Procedure Rules.
 - e. That the advocate purporting to act for the Applicant is improperly on record, having joined the proceedings post-judgment without recording any consent with the advocate currently on record.
 - f. That the court of appeal has jurisdiction to admit new evidence if any exists and the applicant herein should apply to a court of appeal for review.
 - g. That the application on its face is on her interest and should not be entertained.
 - h. That the application does not comply with the provisions of Order 45 of the Civil Procedure Rules, 2010 at all.
 - i. That the applicant has no authority to sue on behalf of the estate. Her authority after the ruling was only limited to signing the transfer.
 - j. That she has failed in her duties as administrator and she is now pursuing her personal interest and the court should order her to administer the estate of the deceased as per the ruling.
 - k. That there is no existing summons for confirmation of grant but only mode of distribution for the 1st household as her household was entirely finalized by court
 - l. That the parcel of land in question is situated within Uasin Gishu County, yet the Applicant seeks injunctive orders against the Land Registrar, Trans Nzoia County, and other government officials, which is procedurally and jurisdictionally defective.
 - m. That the Applicant, together with her children and other members of the 1st household visited the offices of the undersigned advocates at Santuri Court, 1st Floor, Room 111, Eldoret, where the contents of the Ruling were read and explained to them and they expressed satisfaction with the outcome.



- n. That the dissatisfaction expressed by the Administrator and his son arises from the equitable distribution of the estate, which included daughters of the 2nd household. The Administrator had anticipated that the 89-acre parcel would be divided equally between the two households, contrary to their desire to exclusively inherit the entire parcel.
- o. That the firm of M/s Muhatia Pala & Associates Advocates [MPA] does not assert any proprietary interest over the 1/2 point of land initially allocated to the Applicant, as she has unequivocally denied consenting to such allocation. Accordingly, the firm respectfully urges this Honourable Court to review and amend the schedule of distribution to reflect the Applicant's full entitlement. The firm shall thereafter recover its legal fees directly from the Applicant in accordance with the Advocates Remuneration Order.
- p. That advocate's fee was consented to and agreed upon by all family members including the applicant herein.
- q. That the Applicant's application is devoid of merit and constitutes a waste of judicial time and resources.
- r. That an overwhelming majority (99.9%) of the beneficiaries from both households are in agreement with the Ruling and the mode of distribution adopted by the court.
- s. That we further request the court to authorize the OCS Kipsomba Police station and the Area Chief to oversee the implementation of the certification of confirmation of grant.

Affidavit in support of the Grounds of Opposition

5. The Application was also opposed by the 2nd House vide an Affidavit in support of the grounds of Opposition dated 6th September 2025 sworn by Evalyne Jematia Maiyo, Gorrey Jelagat Maiyo, Joyce Jematia Maiyo and Prisca Jepkemei Maiyo who deponed as follows: -
 - a. We are daughters of the 2nd household and rightful beneficiaries of the estate of the late Andrea Chebos Maiyo.
 - b. Our father had two households; we belong to the second, comprising six members.
 - c. We support the court's ruling dated 2nd September 2025, and certificate of grant which fairly concluded a matter pending since 2006.
 - d. The ruling was explained to us at our advocate's office (M/s Muhatia Pala & Associates(MPA), in the presence of the applicant, Peris Jerotich Maiyo, who acknowledged the outcome.
 - e. The applicant, our mother, seeks to exclude us from the estate, preferring to share the entire 35 acres with our brother alone.
 - f. Her claim that we face eviction is false and intended to mislead the court and there is no new evidence as she alleges.
 - g. We have no objection to the 1.5 acres allocated to our advocate for legal and planning services, which all parties, including the applicant, had consented to.
 - h. We are ready to proceed with subdivision and take possession of our respective portions.
 - i. That there is no intention, plan, or arrangement whatsoever to evict us or our mother from the premises we have long known and regarded as our home. Indeed, it is our firm position that she shall remain undisturbed and continue to reside therein peacefully.



- j. The current application is a misuse of judicial time and an attempt to disinherit us.
- k. We respectfully request the court to dismiss the application and uphold the certificate of confirmation of grant.
- l. We humbly beseech this Honourable Court to exercise its discretion and compel the Administrator to diligently perform her duties as assigned under the law and in accordance with the responsibilities bestowed upon her.
- m. It is our earnest plea that the Administrator be directed to take all necessary steps to expedite the administration of the estate and bring this matter to a just and timely conclusion, in the interest of all beneficiaries and in furtherance of justice.
- n. We further pray that the OCS Kipsomba Police Station and the Area Chief be directed to oversee implementation of the grant.

Affidavit in Support of Grounds of Opposition

- 6. The Application is further opposed by the 1st House vide an Affidavit in support of the Grounds of Opposition dated 6th October 2025 sworn by Agnes Maiyo who deponed as follows: -
 - a. I am one of the beneficiaries of the late Andrea Chebos Maiyo's estate and authorized to swear this affidavit on behalf of the 1st household, with their consent.
 - b. We support the court's ruling dated 2nd September 2025 and the certificate of grant issued.
 - c. That the ruling of the Honourable Court is final and conclusive. Any party who feels aggrieved by the said ruling is at liberty to pursue redress through the appellate process, as provided for under the law. It is improper and procedurally untenable to seek to reopen or revisit the same matter before the same court
 - d. We have no objection to the fees awarded to M/s Muhatia Pala & Associates Advocates for legal, survey, and title deed services.
 - e. We agreed to allocate approximately 1.5 acres to the firm, with each beneficiary contributing 1/2 point from their share.
 - f. The administrator has misled the court and concealed evidence since 2006; if any, she should be required to prove her claims.
 - g. The parcel has been subdivided, and all beneficiaries are satisfied and ready to occupy their respective portions.
 - h. We met with our advocate at Santuri Court, Eldoret, and agreed to proceed with the certificate of grant; the applicant was present.
 - i. The applicant appears opposed to her own daughters receiving equal shares of the estate.
 - j. We request that the application dated 22nd September 2025 be dismissed with costs.
 - k. We humbly beseech this Honourable Court to exercise its discretion and compel the Administrator to diligently perform her duties as assigned under the law and in accordance with the responsibilities bestowed upon her.



- l. It is our earnest plea that the Administrator be directed to take all necessary steps to expedite the administration of the estate and bring this matter to a just and timely conclusion, in the interest of all beneficiaries and in furtherance of justice.
- m. We further request the court to authorize the OCS Kipsomba Police Station and the Area Chief to oversee the implementation of the certification of confirmation of grant.

Analysis and determination

Statement of the Problem

7. Inheritance law which is codified under the Succession Act is conceptualized broadly to mean intergenerational transfers of property that occur at different moments in life cycles upon death it's entitled to devolve from one generation to another. It is at the core of our human rights discourse. For reasons that It is a major means for the transfer of the net estate from the deceased person(s) to the survivors of his or her generation or as the case may be to the children of their nuclear family which later again devolves to the second, third, and fourth degree of the family Tree. In many societies within the continent of Africa Kenya not being left behind inheritance is one of the most common means by which physical property and cash receivables is transferred from one generation to another.
8. History tells us that within the ambit of the African customs and culture men traditionally acquired, possessed, and owned all assets whether movable or immovables and in the event of the death of the family, who by creation happens to be a man property survived of him was passed on through the male lineage that is from father to the sons as descendants of that heritage. The daughters whether married or unmarried were left out of the equation when it comes to inheritance of the Assets of the deceased. The African customary law and culture outrightly discriminated against the female gender based on the belief that a woman does not need to inherit or own the property for she can be cared for or maintained under the family structure of her birth or the marital home where she has been married. It is interesting to note that some communities still hold the view that even women at their adulthood prima facie they share the same identification reference with minors. That any decision made by a woman holding the title of her spouse is not capable or competent to make an independent decision without reference to her husband or a male spouse.
9. I am afraid even with the new constitutional dispensation with the Bill of Rights in its historical and Constitutional Context, the patriarchal assumptions whereby the male gender is seen as the natural protector, guarantor, sustainer, provider, and congregator of family property is still alive discourse more specifically on matters of inheritance. This constitutional democratic society by the name of the Republic of Kenya a community among the United Nations set its vision in Article 24 as follows: " A Right of fundamental freedom in the Bill of Rights shall not be limited except by law and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors including:
 - (a) the nature of the right of fundamental freedom
 - (b) the importance of the purpose of the limitation
 - (c) the nature and extent of the limitation
 - (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights an fundamental freedoms of others and



- (e) the relation between the limitation and its purposes and whether there are less restrictive means to achieve the purpose”.

This requires a complete intergenerational paradigm shift and culture mindset change if we were to achieve full equality and non-discrimination on inheritance rights.

10. It is important to mention that properties in the form of land from creation in the Garden of Eden it has been recognized as a primary source of wealth, Social Status, Political Status, Economic Status, and power for it provides the basis of the right to life under Article 26 of *the constitution*. This basically means that shelter, food, Social and Economical Activities, trace their foundation to land ownership and use. That is the very reason that women property inheritance rights should not be relegated to the lowest pitch of the pyramid on inheritance. The letter and spirit of Article 27 (4) of *the constitution* is of great inspiration to this generation to transform our customs and culture within the wider spectrum of this grounds which hold forth as follows: “ The state shall not discriminate directly or indirectly against any person on any ground, including race, sex. Pregnancy, marital status, heath status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4)
11. There are many landmark cases in the repository of Kenya Law Reports which have addressed the conflict between Discriminatory Customary Inheritance Laws such as Patriarchal or male primogeniture and the constitutional guarantees of equality and non-discrimination. What is interesting is that 15 years down the line from the promulgation of our new constitution there is still legal tension between customary law and the imperatives of *the constitution*. In essence the application of customary law of male patriarchal and or primogeniture is a violation of *the constitution*. I am yet to find a compelling circumstances or invocation of a reasonable test which answers the question of precluding the female gender broken down to definitional names like daughters, girls, widows, spouses, and adding to that list extra marital children from inheriting the Intestate or Testate Estate which prima-facie is unconstitutional for it violates the equality clause in Article 27 & Human dignity in Article 28 of *the constitution*. The very reference to customs and culture as the norm and not the exception on inheritance rights seems to right the story of communities as a static thumb print of loss which are static and incapable of conforming to the new constitutional order.
12. I hold a very strong view as I interact with the multi racial and multi ethnic communities in our society as I adjudicate inheritance rights under the power conferred upon me under Article 50 (1) and Article 165 (3) of *the constitution* that much has been achieved but more is expected to transform our societal values so that Human Rights are not just in the chapters of *the constitution* but some to be experienced, lived for and enjoyed as human beings. The Supreme Charter 2010 tackled customary law by its very codification striking down discriminatory rules like primogeniture or patriarchal in customary law, or gender based intestate or biased Last Testamentary Instruments on Devolution of the deceased Estate. Time has come that we live and immerse our lives in the fountain of constitutionalism in promoting the rights to inheritance so that we can guarantee Human Dignity ensuring women living in our communities and other marginalized groups receive equitable shares during the scheme of distribution of the estate.
13. This obiter analysis sits at the center of the conflicts experienced in case dockets on succession to let go the estate of the deceased as covenanted in *the constitution* and the *Law of Succession Act*. If then to some citizens of the Republic the Law of Succession does not answer their aspirations and vision of the law in inheritance may be time has come for them to approach the National Assembly to enact Customary Law Act to harmonize and codify certain customs and culture to be recognized and protected but



must be consistent with the constitutional values in Article 10 and other related provisions in our constitution including the fundamental Human Rights as crafted in chapter 4 being the Bill of Rights. The gist of the many interlocutory applications are sometimes ordained to deny right of inheritance to other members of the deceased family so that they can enjoy the fruits of the properties acquired by the deceased during his life time. I liken the legal battleground in our probate courts as between siblings or heirs to the estate as projected in Section 29 of the [law of Succession Act](#) to the maxim and mantra or phrase of harvesting where one did not sow meaning some heirs to the estate fight before Succession Courts, legally and physically to profit or benefit from effort, investment, or work that was made by someone else and not oneself (Emphasis mine).

14. The [law of Succession Act](#) was enacted way back in 1981. It calls for an urgent visitation by the National Assembly to prominently establish whether the provisions are in consonant with [the constitution](#) 2010. There is also need for feedback from the legal system which interprets the Act in their day to day lives as Judges and Magistrates presiding over their avalanche of Succession Disputes in the various courts across the country. This will inform the sustainability of the Act in delivering real justice to the Kenyan people and avoid the injustice of probate cases being litigated ad-indefinitum limiting access the fundamental properties rights to other legitimate heirs to the estate.
15. I now come to the gist why the parties are before this court. In a nutshell, the Applicant seeks, inter alia, leave for change of advocates after judgment, stay of execution of the ruling and certificate of confirmed grant issued on 2nd September 2025, injunctive orders restraining any dealings with the estate property pending determination of the application, stay and/or setting aside of the summons for confirmation of grant filed on 22nd September 2025 and review, variation or setting aside of the ruling delivered on 2nd September 2025 on grounds of alleged error apparent on the face of the record and discovery of new and important evidence.
16. I have carefully considered the Application, the affidavits in support, the Grounds of Opposition and the replying affidavit and the following issues arise for determination: -
 - a. Whether this Court should grant leave to the firm of JK KAPTICH & ASSOCIATES ADVOCATES to come on record for the Applicant?
 - b. Whether the Applicant has met the threshold for review under Order 45 of the Civil Procedure Rules?
 - c. Whether the Applicant has established grounds for stay of execution of the ruling and/ Judgement delivered on 2nd September 2025 and Certificate of Confirmation of Grant?

Whether this Court should grant leave to the firm of JK KAPTICH & ASSOCIATES ADVOCATES to come on record for the Applicant?

17. I take note that the Applicant herein seeks leave from this Honourable to grant the firm of JK Kaptich & Associates Advocates to come on record for the Applicant in place of the firm of Muhatia Pala & Associates Advocates. It is settled law that where an advocate intends to come on record in place of another advocate or firm after judgment has already been delivered, such advocate must first seek leave of the court by way of a formal application, which must be served upon the outgoing advocate. Upon such service, the court is required to consider the application and, if satisfied, grant leave in accordance with the law, thereby enabling the incoming advocate to properly file and effect a Notice of Change of Advocates.
18. Conversely, an incoming advocate may opt to obtain the consent of the outgoing advocate and thereafter file the said consent together with a Notice of Change of Advocates. Upon the filing of such



consent, the court is then invited to endorse and adopt it as an order of the court, thereby formally sanctioning the change of advocates. It is important to emphasize that it is the court's endorsement or adoption of the consent that accords it legal effect and makes it part of the court record; absent such endorsement, the consent has no operative force.

19. The law on change of legal representation is provided for in Order 9 rule 9 of the Civil Procedure Rules which provides as follows: -

When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court—

- a. upon an application with notice to all the parties; or
- b. upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.

20. The Court in *Alfa Haulage Limited Vs Christopher Kyeva Nzioka* [2020] eKLR, held as follows with regards to the aforesaid provision above, “The provisions of Order 9 rule 9 of the Civil Procedure Rules is couched in mandatory terms by use of the word 'shall'. Similarly, the provisions of Order 9 Rule 9 of the Civil Procedure Rules were aptly discussed by Eboso J. in the case of *Serah Wanjiru Kung'u Vs Peter Munyua Kimani* [2021] eKLR where he stated that;

“The above framework was introduced in the Civil Procedure Rules to deal with disruptive changes that litigants and advocates used to effect, often for the purpose of unfairly dislodging previous advocates without settling their costs. The provision on filing a consent between the outgoing and the incoming law firms was intended to ease the process of effecting change of advocates post-judgment. In my view, once the consent is executed and filed and a notice of change is fled, the new law firm is properly on record. The adoption of the consent as an order of the Court is merely intended to make the Court record clear for avoidance of doubt...”

21. The provisions of Order 9 Rule 9 are couched in mandatory terms and in the absence of a consent between the two law firms or leave from court to change legal representation, it can only be inferred that the present advocates came on record un procedurally. I wish to associate myself with the sentiments of Odunga J. (as he then was) in the case of *Lalji Bhimji Shangani Builders & Contractors Vs City Council of Nairobi* [2012] eKLR where he held as follows;

“A party who without any justification decides not to follow the procedure laid down for orderly conduct of litigation cannot be allowed to fall back on the such objective for assistance and where no explanation had been offered for failure to observe the rules of procedure the court may well be entitled to conclude that failure to comply therewith was deliberate.”

22. The Court in the case of *S. K. Tarwadi Vs Veronica Muehlemann* [2019] eKLR where the Court held that;

“In my view, the essence of Order 9 Rule 9 CPR is to protect advocates from mischievous clients who will wait until a judgement has been delivered and then sack the advocate and either replace him with another advocate or act in person. The provision is therefore an



important one and cannot be wished away. Indeed, Order 9 does not foresee how Rule 9 can be sidestepped hence the enactment of Rule 10 as follows:”

23. The provisions of Order 9 Rule 9 of the Civil Procedure Rules do not impede the right of a party to be represented by an Advocate of his/her choice, but sets out the procedure to be complied with when a party wants to change counsel. Thus, a party wishing to change counsel after judgment can only do so with the approval of the Court. In the present case, judgment was delivered on 2nd September 2025. The Applicant seeks leave for M/s JK Kaptich & Associates Advocates to come on record in place of M/s Muhatia Pala & Associates Advocates. While the Applicant has formally sought leave, the surrounding circumstances cannot be ignored. The record shows that the impugned ruling conclusively determined the mode of distribution of the estate.
24. The right to inheritance under the Law of Succession Act is individualized in the sense that each beneficiary is entitled to a distinct and identifiable share of the estate from a reading of section 35 to 42 of the Law of Succession Act. However, those rights are at the same time cumulative and interdependent as they arise from a single estate and must be realized in a manner that preserves equity, finality and harmony among all beneficiaries. A beneficiary cannot, under the guise of asserting personal entitlement, limit, diminish, or defeat the inheritance rights of other beneficiaries, particularly where the court has already pronounced itself on the distribution of the estate in a final judgment.
25. From the facts of this case, the Applicant’s attempt to introduce new legal representation after delivery of the ruling is inextricably tied to an effort to reopen and reconfigure a distribution that has already been conclusively determined. Such a course, if permitted, would not only prejudice the rights of the other beneficiaries but would also undermine the cumulative nature of succession rights, where the entitlement of one beneficiary cannot be isolated and advanced at the expense of the rest once distribution has been lawfully settled. While the Court acknowledges that a litigant is generally at liberty to instruct counsel of their choice, that right is not absolute and must be exercised within the confines of procedural propriety and the doctrine of finality. At this juncture, the estate has been fully adjudicated, a certificate of confirmed grant issued and the Court has become functus officio. The hiring of new legal representation at this stage is therefore not akin to advancing representation for purposes of execution, but rather appears calculated to reopen substantive issues already determined.
26. The principle of finality must be applied in appropriate instances so as to avoid Courts re-litigating on settled matters and the principle of finality is firmly imbedded in the doctrine of res judicata. I also take note that the principle of finality is a matter of public policy and is one of the pillars upon which our judicial system is founded and the doctrine of res judicata prevents a multiplicity of suits, which would ordinarily clog the Courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party and liability for another party.
27. The Supreme Court in the case of Raila Odinga & 2 Others Vs IEBC & 3 Others (2013) eKLR, while discussing the doctrine of functus officio, stated:-

“We, therefore, have to consider the concept of “functus officio,” as understood in law. Daniel Malan Pretorius, in “The Origins of the functus officio Doctrine, with Specific Reference to its Application in Administrative Law,” (2005) 122 SALJ 832, has thus explicated this concept:

“The functus officio doctrine is one of the mechanisms by means of which the law gives expression to the principle of finality.”



According to this doctrine, a person who is vested with adjudicative or decision-making powers may, as a general rule, exercise those powers only once in relation to the same matter. ... The [principle] is that once such a decision has been given, it is (subject to any right of appeal to a superior body or functionary) final and conclusive. Such a decision cannot be revoked or varied by the decision-maker.”

28. Functus officio is an enduring principle of law that prevents the re-opening of a matter before a court that rendered the final decision thereon (The Court of Appeal in *Telkom Kenya Limited Vs John Ochanda (Suing on His own Behalf and on Behalf of 996 Former Employees of Telkom Kenya Limited)* [2014] eKLR). Similarly, in *John Gilbert Ouma Vs Kenya Ferry Services Limited* [2021] eKLR, it was clarified that the doctrine of functus officio does not bar a court from entertaining a matter it has already decided but prevents it from revisiting the merits once a final judgment has been rendered and a decree issued.
29. I am of the considered opinion, that allowing the instant application more specifically granting leave to the firm of M/s JK Kaptich & Associates Advocates in place of the firm of M/s Muhatia Pala & Associates Advocates would, in effect, amount to reopening the case afresh, which this court cannot permit under the circumstances. Litigation must come to an end, and it is incumbent upon parties to present their evidence and arguments fully and comprehensively during the trial process or at any relevant stage where submissions are invited. The principle of finality in litigation is sacrosanct, and courts must guard against abuse of process through applications that seek to re-litigate matters that have already been determined.
30. This Court is duty-bound to prevent such forum-shopping and to protect the integrity of its own judgments. The law demands finality in litigation; it neither contemplates nor permits a perpetual cycle of identical disputes being brought before the courts. In the circumstances, the proper and lawful recourse for an aggrieved party is not to seek to introduce new counsel before the same court in order to re-litigate concluded matters, but to pursue remedies before the Appellate Court, which is the appropriate forum for challenging the merits, correctness, or fairness of the judgment. To hold otherwise would offend the principles of certainty, finality in litigation and orderly administration of estates.

Whether the Applicant has met the threshold for review under Order 45 of the Civil Procedure Rules.

31. 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. 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.
32. On the other hand, 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.
33. From my reading and understanding of the two provisions above, 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: -
- a. 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.
 - b. On account of some mistake or error apparent on the face of the record.
 - c. Any other sufficient reason and that the Application has to be made without unreasonable delay.
34. Courts of superior jurisdiction have moreover interpreted the provisions of section 80 of the [Civil Procedure Act](#) and Order 45 rule 1 of the Civil Procedure Rules. In Republic Vs Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] eKLR the Court set out the principles to consider in the review of its own decisions. It was observed;
- a. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
 - b. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
 - c. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
 - d. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
 - e. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
 - f. While considering an Application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
 - g. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.



- h. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
 - i. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.
 - j. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.
35. The Court of Appeal in Civil Appeal No. 2111 of 1996, National Bank of Kenya Vs Ndungu Njau, remarked on review applications as follows: -

“...A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the matter nor can it be a ground for review that the court proceeds on an incorrect expansion of the law.”

36. In Republic Vs Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] KEHC 6379 (KLR), the Court considered the import of some mistake or error apparent on the face of the record as captured in Order 45 of the Civil Procedure Rules. It rendered itself thus: -

“...Review is impermissible without a glaring omission, evident mistake or similar ominous error. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by an order or review.

The power of review is available only when there is an error apparent on the face of the record. I emphasize that review proceedings are not an appeal. The review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is not permissible.”

37. In Nyamogo & Nyamogo Vs Kogo (2001) EA 170 the Court discussed what would constitute a long-drawn process. It observed as follows;

“.... An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of un definitiveness inherent in its very nature and it must be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning on points where there may



conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was possible. Mere error or wrong view is certainly no ground for review though it may be one for appeal.

38. From the totality of the facts placed before this Honourable Court, it is evident that the Application dated 24th September 2025 does not meet the legal and factual threshold for review of the ruling/judgment delivered on 2nd September 2025. To begin with, the power of review is a narrow and circumscribed jurisdiction, intended to correct patent errors, consider genuinely new and previously unavailable evidence or address other sufficient reasons that are plainly apparent on the face of the record. It is not an avenue through which a dissatisfied party may invite the Court to sit on appeal over its own decision or to re-evaluate evidence already considered and conclusively determined.
39. In the present matter, the Applicant alleges the existence of an “error apparent on the face of the record” and discovery of “fresh and important evidence.” However, a careful examination of the Application and the supporting affidavit reveals that no specific, self-evident error has been identified. The Applicant does not point to any clerical, arithmetical or manifest legal mistake that is obvious without the need for elaborate argument. Instead, the grievances raised relate to the manner in which the Court applied sections 40 and 42 of the *Law of Succession Act* and the ultimate mode of distribution adopted. Such complaints go to the merits of the decision not to an error apparent on the face of the record and therefore fall squarely within the realm of an appeal rather than review.
40. Similarly, the allegation of discovery of fresh and material evidence is unsupported by cogent particulars. The Applicant has neither clearly identified the alleged new evidence nor demonstrated that, despite the exercise of due diligence, such evidence was unavailable at the time of hearing. This is particularly significant given that the succession dispute has been pending since 2006 and the parties were afforded ample opportunity to place all relevant material before the Court prior to the delivery of the ruling. Bare assertions of new evidence, without disclosure or explanation, cannot ground a review.
41. The Court also notes that the impugned ruling of 2nd September 2025 was the culmination of protracted litigation involving both households of the deceased and it resulted in the issuance of a Certificate of Confirmation of Grant. The estate was distributed in a manner that recognized all beneficiaries, including daughters, in conformity with *the Constitution* and the *Law of Succession Act*. The subsequent filing of the present Application, coming soon after delivery of the ruling, appears to be driven not by discovery of new matters but by dissatisfaction with the outcome particularly the equitable distribution of the estate among all entitled beneficiaries.
42. In light of the foregoing, this Court is persuaded that the Application does not disclose any legally sustainable basis for reviewing, varying or setting aside the ruling/judgment delivered on 2nd September 2025. What the Applicant seeks is, in substance, a second bite at the cherry through the review jurisdiction, which the law does not permit. The proper forum for ventilating grievances relating to the correctness or fairness of the decision lies in the appellate process, not before the same court through a review application. Accordingly, the Application is devoid of merit and does not warrant the exercise of this Court’s review jurisdiction.



Whether the Applicant has established grounds for stay of execution of the ruling and/Judgement delivered on 2nd September 2025 and Certificate of Confirmation of Grant?

43. The attendant provision governing issuance of stay of execution orders in succession matters, as invoked by the applicants is Rule 49 of the Probate and Administration Rules. Rule 49 of the Probate and Administration Rules provides that: -

“A person desiring to make an application to the court relating to the estate of a deceased person for which no provision is made elsewhere in these Rules shall file a summons supported, if necessary, by affidavit.”

44. Additionally, the court can draw upon the powers under section 47 and Rule 73 of the Probate and Administration Rules in order to meet the ends of justice. The governing statutory provision on stay of execution is Order 42 Rule 6(2) of the Civil Procedure Rules which provides that; -

No order for stay of execution shall be made under sub rule (1) unless:

- (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

45. Stay of execution is a discretionary power which must be exercised on defined principles and facts. The court exercises its discretion in granting of stay of execution pending appeal. This was held in the case of *Butt Vs Rent Restriction Tribunal (1982) KLR* that: -

- a. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
- b. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion.
- c. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
- d. The court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.
- e. The court in exercising its powers under Order XLI rule 4(2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”

46. The main objective of stay is to prevent substantial loss which ideally, would serve the purpose of preventing the appeal from being rendered nugatory. In *James Wangalwa & Another Vs Agnes Naliaka Cheseto [2012] eKLR* the court held as follows: -

“The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant



as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

47. A stay of execution should only be granted where sufficient cause is shown. In the case of Antoine Ndiaye Vs African Virtual University (2015) eKLR the Court opined that: -

“.... stay of execution should only be granted where sufficient cause has been shown by the applicant. And in determining whether sufficient cause has been shown, the court should be guided by the three prerequisites provided under order 42 rule 6 of the Civil Procedure Rules...”

48. As this is a succession matter, the applicants are not in a position to offer security as a condition of stay. The main determinant would be the substantial loss that would be occasioned if the orders sought are not granted. In Machira t/a Machira & Co. Advocates Vs East African Standard (No 2) (2002) KLR 63 the Court of appeal considered as to what amounts to substantial loss and held that: –

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

49. In the present case, the Applicant anchors her grounds for an order of stay on allegations of imminent eviction, irreparable harm, and the risk that execution of the confirmed grant will render her application nugatory. However, these allegations are not borne out by the evidence on record. First, on the question of substantial loss, the Applicant has failed to demonstrate, with specificity and proof, the nature of the loss she stands to suffer if the grant is implemented. The mere fact that distribution is to proceed in accordance with a lawful court order does not, in itself, amount to substantial loss. Succession proceedings are intended to culminate in distribution of the estate of the deceased which leads to the issuance of a Certificate of Confirmation of Grant. Execution of the said Certificate of Confirmation of Grant is a natural and a resultant consequence of a final determination by the probate court.

50. Secondly, the Applicant’s claim of imminent eviction is speculative and unsupported. Affidavits sworn by beneficiaries from both the 1st and 2nd households expressly deny any intention to evict the Applicant from the portion she occupies. Indeed, the evidence demonstrates a collective willingness by the beneficiaries to implement the grant peacefully, with assurances that the Applicant’s occupation shall remain undisturbed. In this regard, the Court reiterates that distribution of an estate does not automatically translate into eviction and that any distribution matrix must always take into account existing occupational rights of parties on the ground. The Applicant has therefore not met the threshold required to establish irreparable harm.

51. The ruling of 2nd September 2025 conclusively determined the rights of all beneficiaries and the proper avenue for challenging that determination lies in the appellate process. Implementation of the grant does not extinguish the Applicant’s right to appeal nor does it deprive an appellate court of jurisdiction



to grant appropriate relief if so warranted. Further, the balance of convenience does not favour the grant of stay. This matter has been pending since 2006 and the overwhelming majority of beneficiaries from both households have expressed satisfaction with the ruling and are desirous of finalizing the administration of the estate. Granting a stay in the absence of compelling grounds would only serve to delay the conclusion of the matter, perpetuate intra-family conflict and unjustly prejudice beneficiaries who are entitled to enjoy the fruits of a lawful judgment.

52. In the circumstances and having regard to the totality of the facts and the applicable legal principles, it is evident that the Applicant has not established clear, cogent or sufficient grounds to warrant a stay of execution. The prayer for stay is therefore not merited and must fail.
53. The Application when considered holistically, is an attempt to reopen a matter conclusively determined after nearly two decades of litigation. The Court is persuaded that the application is misconceived, incompetent and an abuse of the court process. Granting the orders sought would undermine the principle of finality in litigation and occasion unnecessary delay in the administration and transmission of the estate. Consequently, the Notice of Motion Application dated 24th September 2025 is devoid of merit and the following orders shall abide: -
- a. That the prayer seeking leave to be granted to the firm of JK Kaptich & Associates to come on record for the Applicant in place of the firm of Muhatia Pala & Associates Advocates be and is hereby declined.
 - b. That all prayers seeking stay of execution, stay of operation, and/or suspension of the ruling/judgment delivered on 2nd September 2025 and the Certificate of confirmation of Grant and all consequential orders are hereby declined.
 - c. That the prayer seeking injunctive orders restraining the Administrators, the Land Registrar, County Government officials or any other persons from implementing the Certificate of Confirmation of Grant be and is hereby declined.
 - d. That an order be and is hereby issued that ruling/judgment delivered on 2nd September 2025 and the resultant Certificate of Confirmation of Grant is hereby upheld fully and remain valid, binding and enforceable.
 - e. That an order do issue directing the Administrator to forthwith and diligently proceed with the implementation of the Certificate of Confirmation of Grant dated 2nd September 2025 in accordance with the [Law of Succession Act](#) and other applicable laws taking into account existing occupational rights of the parties during implementation within 45 days from today's ruling.
 - f. There shall be a Status Conference on 4th March 2026 to confirm compliance with the aforesaid orders.
 - g. There shall be no orders as to the costs this being a family matter.
54. Orders accordingly.

DATED, SIGNED AND DELIVERED VIA CTS AND E-MAIL AT ELDORET THIS 15TH JANUARY 2026

.....

R. NYAKUNDI
JUDGE

