

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**MISCELLANEOUS CIVIL APPLICATION NO. E026 OF 2023**

**IN THE MATTER OF THE ESTATE OF STEPHEN KIRAI**

**MWITHIMBU**

**FELIX            MURITHI            KIRAI            .....**

**.....APPLICANT**

**-VERSUS-**

**VERONICA MUKWERURI KIRAI (Legal Representative of the  
Estate of STEPHEN KIRAI MWITHIMBU) .....**

**..... RESPONDENT**

**RULING**

1. By an application dated 22<sup>nd</sup> July 2025 Felix Murithi Kirai has sought the following orders:-

- a) That this honourable court be pleased to certify this application as urgent and order that the same be heard expeditiously.***

- b) That the firm of M/S Kariuki Law Advocates be granted leave to come on record as advocates for the applicant herein in place of Messrs. Kaberia Arimba & Company advocates.***
- c) That the honourable court be pleased to order a temporary stay of proceedings in Meru CM Succession Cause No. E026 of 2023 pending the hearing of this application inter parties.***
- d) That the honourable court be pleased to review set aside its ruling and orders delivered on 06/06/2024.***
- e) That this honourable court be pleased to withdraw and transfer Meru CM Succession Cause No. E026 of 2023 before Meru Chief Magistrate's Court to this court for trial and final disposal.***
2. The application is supported by the grounds set out on its face and the applicant's affidavit sworn on even date.
3. In a nutshell, the applicant states that he had filed an application dated 6/11/2023 seeking to have Meru C.M Succession Cause No. E026 of 2023 transferred to this court.

That vide a ruling delivered on 6/6/2024, this court declined to grant the orders sought in that application. That the valuation report produced in support of the earlier application valued one property at Kshs.30,500,000/= which is well beyond the previously jurisdiction of the Chief Magistrate's court. That the said report was not challenged. That there are sufficient reasons to review the said ruling.

4. The respondent opposed the application terming it as misconceived and abuse of the court process.
5. The respondent states that the applicant had filed a similar application which was dismissed. That this application is an attempt to ask the court to sit on appeal on a ruling of a Judge of concurrent jurisdiction. That this is an attempt by the applicant to delay the confirmation of the grant in the succession case before the lower court.
6. Parties filed submissions which I have perused and will not rehash them. I will refer to them when necessary.
7. Being an application for review, the applicant has to being himself within the ambit of section 80 of Civil Procedures Act which provides for review. It states as follows:

## **80. Review**

***Any person who considers himself aggrieved—***

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

***(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.***

8. The section is further amplified by the provisions of Order 45 Rule 1 of the Civil Procedure Rules which states as follows:

**Application for review of decree or order [Order 45, rule 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)A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.***

9. **In *Muyodi vs. Industrial & Commercial Development Corporation & Anor.*, (2006) 1 EA 243),**

the Court of Appeal stated as follows regarding an application for review:

***“For an application for review under Order XLV, Rule 1 to succeed, the applicant was obliged to show that there had been discovery of new and important matter or evidence which, after due diligence, was not within his knowledge or could not be produced at that time. Alternatively, he had to show that there was some mistake or error apparent on the face of the record or some other sufficient reason. In addition, the application was to be made without unreasonable delay”.***

10. In the Indian case of **Aribam Tuleshwar Sharma vs. Ariban Pishak Sharma (1979) 45CC 389, 1979(11) UJ 300 SC**, it was held that:

***“The power of review may be exercised on the discovery of new and important matter or evidence which, after exercise of due diligence***

***was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits that would be province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court.”***

11. Looking at the application it is basically similar to the earlier one that had been dealt with by this court in its ruling of 6/6/2024. There is no error apparent on the face of the court record or any new matter that has arisen.
12. In my view, and in agreement with the respondent, the applicant is attempting to appeal against the said ruling by

presenting the same grounds, again hoping to obtain a different result.

13. In paragraph 13 of his submissions, the applicant clearly states that the court “erred in its ruling” of 6/6/2026 by holding that the jurisdiction question is that of self-evaluation by the trial court. This is clearly an attempt to have this court correct the purported error, which is a conclusive finding of the court. That jurisdiction is vested in the appellate court, not this court.
14. I am thus of the view that the application cannot succeed. The applicant ought to have either appealed against the earlier decision or heeded this court’s advice in the said ruling and addressed the trial court, tendering evidence of the value of the subject matter. If the lower court was to find that the value of the estate exceeded its previously jurisdiction, then it would have to down its tools. That would then give the applicant the right to move to this court for a transfer, if possible, or file a petition before a court of competent jurisdiction. If the court finds that it has

jurisdiction, then the applicant has a right to approach this court by way of appeal against that finding.

15. From the foregoing reasons, I find the application dated 22<sup>nd</sup> January, 2025 to lack any merit and it is dismissed with costs.

**Dated, signed and delivered at Meru this 19<sup>th</sup> day of January 2026.**

.....

**H. M. NYAGA**

**JUDGE**