



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 2188 OF 2015**  
**IN THE MATTER THE ESTATE OF AHMED MEERA LEBBE**  
**SEYADO SHIAB DEEN (DECEASED)**

**AHMED SALEEN DEEN ..... 1<sup>ST</sup>**  
**APPLICANT**

**ZAINAB DEEN ..... 2<sup>ND</sup>**  
**APPLICANT**

**VERSUS**

**SAIYAD ABBAS AYSHA RAUFF ..... 2<sup>ND</sup>**  
**RESPONDENT**

**RULING**

1. This ruling relates to the application dated **18<sup>th</sup> July, 2024** filed by the applicants, Ahmed Saleem Deen and Zainab Deen; seeking for **ORDERS THAT:**
  - 1) **The ruling and order herein issued on the 3<sup>rd</sup> June, 2024 be reviewed.**
  - 2) **The costs of this application be provided for.**
2. The application is based on the grounds thereof and supported by affidavit sworn by Ahmed Saleem Deen on 18<sup>th</sup> July, 2024 and 6<sup>th</sup> February, 2025 respectively.

3. He avers *inter alia* that he is a co-executor of the deceased's estate acting with the authority of his co-executrix Zainab Deen. He challenges the impugned ruling on the ground that it sanctioned the transfer and distribution of assets that do not properly fall within the ambit of the succession cause. He maintains that the deceased's interest comprised shares in Occidental Investments Limited and not the company's assets themselves, which are owned by a separate legal entity and are therefore not available for distribution under the Law of Succession Act.
4. He argues that any dealings with such assets must comply with company law and involve the relevant corporate organs. He states that the only assets amenable to the succession proceedings are certain bank accounts, which in any event cannot be accessed or distributed without the participation of the banks and the cooperation of all co-executors.
5. He further contends that these matters were expressly raised in his earlier affidavit and written submissions but were not addressed in the ruling of **3<sup>rd</sup> June, 2024**, rendering the decision one-sided and unjust.
6. He denies any intermeddling or refusal to render accounts, asserting instead that the applicant's lack of cooperation has caused the stalemate and that it would offend principles of natural justice to penalize the respondents for failure to account for assets belonging to a distinct corporate entity. On that basis, he urges that the ruling be reviewed, the earlier application dismissed and the present application found to be vexatious and an abuse of the court process.

7. The application is opposed vide replying affidavit sworn by Saiyad Abbas Aysha Rauff on **20<sup>th</sup> January, 2025** who avers *inter alia* that he is a duly appointed co-executor of the estate together with Ahmed Saleem Deen and Zainab Deen. He contends that the application for review is fundamentally misconceived, legally untenable and constitutes an abuse of the court process. According to him, there is no error apparent on the face of the record to justify review and the court correctly exercised its discretion after considering all affidavits and written submissions on record.
8. He avers that the applicants are improperly inviting the court to re-evaluate evidence and re-open matters that properly lie within the jurisdiction of an appellate court. He further deposes that the court lawfully ordered the Applicants to render full estate accounts, an obligation they have persistently failed to discharge despite clear directions.
9. He asserts that the estate owns **95%** shareholding in Occidental Investments Limited and that any decision relating to the sale of the company's substantive assets required the approval of all administrators, which approval was neither sought nor obtained. He maintains that Ahmed Saleem Deen and Zainab Deen unlawfully proceeded with the sale and distribution of proceeds without consultation, contrary to the deceased's wishes as expressed in the will and codicil. He alleges that only a partial distribution of **Kshs. 17 million** has been disclosed, leaving approximately **Kshs. 57.78 million** from the sale proceeds unaccounted for.

10. He states that the applicants deliberately excluded him from the administration process, concealed material information and improperly relied on the corporate structure of the company to justify unilateral disposal of estate assets. He emphasizes that his domicile in Sri Lanka does not diminish his authority or responsibility as a co-executor and that his insistence on proper accounts is aimed at protecting the interests of all beneficiaries in both Kenya and Sri Lanka.
11. He concludes that the application for review seeks to circumvent compliance with lawful court orders, undermine accountability and defeat the ends of justice. Accordingly, he prays that the summons for review be dismissed with costs.
12. The parties have not filed written submissions.

#### **ANALYSIS AND DETERMINATION**

13. I have read the application and the responses thereto.
14. In **CIVIL APPEAL NO. 2111 OF 1996, NATIONAL BANK OF KENYA VS NDUNGU NJAU**, the Court of Appeal held that: ***“...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 proceed on an incorrect expansion of the law...”***

15. The application turns on whether the ruling of **3<sup>rd</sup> June, 2024** discloses a proper basis for review, typically an error apparent on the face of the record, discovery of new and important matter not previously within the applicants' knowledge despite due diligence or other sufficient reason; and whether the applicants are instead inviting the court to re-hear the merits under the guise of review.
16. On the affidavits, the applicants' contention is that the court allegedly sanctioned distribution of company assets as though they were estate assets, contrary to the doctrine of separate legal personality and that the court failed to address arguments earlier raised on the distinction between a shareholder's interest and the company's property.
17. A perusal of the ruling delivered on 3<sup>rd</sup> June, 2024 indicates that the matter before the court was rendering of an accurate inventory of all the assets and liabilities of the estate by the respondents which is what the court decided on. Issues of company assets were not raised not discussed in the said ruling.
18. The respondent's opposition raises a competing, weighty point *to wit* the real dispute may not be whether company assets can be distributed per se, but whether the applicants, as co-executors, unilaterally authorized disposal of substantial company assets/proceeds without the consent of the third executor and without rendering full and accurate accounts as previously ordered.
19. Even accepting separate corporate personality, an estate that holds a controlling shareholding, allegedly at 95%, still

generate duties on executors to account for any benefits, dividends, or distributions attributable to the estate's shareholding and to explain the basis and authority for any transactions and how proceeds were applied particularly where the will/codicil is said to have directed how proceeds were to be distributed.

20. The respondent's allegations of partial disclosure (Kshs. 17 million) and large unaccounted sums (Kshs. 57.78 million) crystallize a central fiduciary concern: whether the review application is a bona fide attempt to correct a legal misdirection, or a strategic attempt to avoid compliance with accounting and transparency obligations imposed by the court.
21. On the basis of the foregoing the executors are obliged to render full accounts and disclose all dealings touching on estate interests, including any proceeds or benefits received through the estate's shareholding. In any case their powers to deal with the shares in the company emanated from the grant issued by this court. They cannot therefore be heard to split hairs between the Companies Act as well as the Succession Act.
22. As a matter of fact, the orders of this court did not interfere with the two legal regimes which are mutually exclusive. The orders simply demanded accountability by the administrators of the estate.
23. **Consequently, I do not find any merit in the application and is hereby dismissed with costs to the respondent.**

**Dated signed and delivered via video link at Nairobi  
this  
29<sup>th</sup> day of January 2026.**

**H K CHEMITEI  
JUDGE**