



**In re Estate of Andrew Mwabaka Muyale alias Muyare Mwabaka (Deceased)
(Succession Cause 694 of 2011) [2026] KEHC 382 (KLR) (22 January 2026) (Ruling)**

Neutral citation: [2026] KEHC 382 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 694 OF 2011
S MBUNGI, J
JANUARY 22, 2026**

**IN THE MATTER OF THE ESTATE OF ANDREW MWABAKA
MUYALE, ALIAS MUYARE MWABAKA-DECEASED**

BETWEEN

WILFRED LINSEN LIBASIA APPLICANT

AND

JULIANA VILINGA MUYALE RESPONDENT

RULING

1. The applicant herein filed a notice of motion application dated 24th May 2024 seeking the following orders;
 - a. That the Honourable court may be pleased to review its judgment delivered on the 31st day of January 2024, since there are new facts which have come to the knowledge of the parties which were not within their reach during the hearing of the case.
 - b. That the costs of this application be provided for.
2. The Application is premised on the grounds set out on its face and on the supporting affidavit sworn on the same day by the applicant who contends that the court had distributed the deceased estate and that not all beneficiaries were aware that the estate had been distributed to third parties and that the land parcel number Isukha/Murhanda/381 which was allocated to Calistus Muyale Ford was sold off during the succession process and was not available for distribution.
3. He further avers that land Parcel Number Isukha/Mukhulusu/370, which had been allocated to himself and his siblings were sold by his late father to Adriano Libasia Muyale while the succession process was ongoing, and hence it was not available for distribution.



4. He stated that all the deceased beneficiaries stay on the land parcel Isukha/Murhanda/158 and have even built their homestead on the land, and that it would be difficult to relocate the families to other parcels of land that no longer exist, and as such, the beneficiaries would be rendered homeless if the judgment is implemented as it is.
5. They pray that the court reviews its judgment to avoid the disruption of the other beneficiaries.
6. The respondent filed his response vide a replying affidavit dated 13th August 2024 as one of the administrators to the estate. She contended that their late father, during his lifetime, had given their brother, Adriano Libasia Muyale and the father to Wilfred Lisen Libasia, the whole parcel of land Isukha/Muranda/370, and it was Adriano who had disposed of it to a third party, Elias Indasi Matuna, after Adriano Libasia Muyale sold him the land and bought an alternative land that he settled his family, including the applicant, and thus the court was correct in holding that the Adriano Libasia Muyale already sold his share of the inheritance.
7. They further claim that Isukha/Murhanda/381 measuring 0.40 was given to Calistus Muyale Ford, and at the time of delivering the judgment 31/04/2024, the land was still available to him, and it is currently in the name of their mother Deresina Khavugwi Muyale, and it can easily be changed to the name Calistis Muyale Ford and deny the allegation that the land is in the name of a stranger.
8. They state that there are no new facts that are available to warrant the review of the judgment made on 31/1/2024, as the issues raised by the applicant had already been canvassed during the hearing of the succession cause and that the application ought to be dismissed for lack of merit.
9. The application was canvassed by way of a written submission.

Applicant's submission.

10. The applicant filed their submission dated 16th September 2025, where they raised one issue for determination, being whether there are sufficient reasons for a review.
11. They quoted section 80 and order 45 rule 1 of the Civil Procedure rules, as well as Rule 63 of the Probate and Administration rules.
12. According to the applicant, the beneficiaries were not aware that part of the deceased estate was already transferred to a third party and that the lands allocated to Calistus Muyale Ford Isukha/Murhanda/381 were sold off and not available for distribution and that the land parcel Isukha/Mukulusi/370 allocated to the applicant and their siblings was already sold by their late father during the pendency of the succession process, rendering it unavailable.
13. He claims that with these new facts in mind, the court should review its judgment and redistribute the estate to meet the ends of justice.

Respondent's submission

14. In their submission dated 22nd September 2025, the respondent denied the allegation that they had sold off any land to a third party and aver that the land was available for distribution at the time of the succession process and given to Calistus Muyale Ford and as such, there is no need to review the judgment.
15. On the land parcel Isukha/Mukulusu/370, they acknowledged that the land was given to Adriano Libasia Muyale, who disposed of it to a third party and bought an alternative land in Kabras, where he settled the whole family, including the applicant, as it was the testimony of Shimanga Madasio and



Simon Witindi Ayisi, and thus it is not a new finding. They claim that the family of Adriano Livasia got the whole parcel of land while the respondents were to share the land parcel Isukha/Muranda/158, and hence there is no need for the court to review its judgment.

16. They aver that the issues raised by the Applicant were well within their knowledge during the succession cause and hence no new issues have arisen to warrant a review of the judgment delivered on 31/1/2024, and as such the application should be dismissed with costs.

Analysis and determination

17. I have carefully considered the application, the affidavits, and the submissions of both parties. The issue for determination is whether the Applicant has established grounds for review of the judgment dated 31st January 2024.
18. The power to review judgments in succession matters is derived from Rule 63 of the Probate and Administration Rules, which imports the provisions of Order 45 of the Civil Procedure Rules where not inconsistent with the *Law of Succession Act*. Section 80 of the *Civil Procedure Act* empowers the court to review its decrees or orders.
19. Order 45 Rule 1 of the Civil Procedure Rules provides that any person aggrieved by a decree or order may apply for review on the grounds of:
- (a) 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 at the time;
 - (b) some mistake or error apparent on the face of the record; or
 - (c) any other sufficient reason. Such application must be made without unreasonable delay.
20. The principles governing review are now settled. In *National Bank of Kenya Ltd v Njau* (Civil Appeal 211 of 1996) [1997] KECA 71 (KLR) (27 May 1997) (Judgment) the Court of Appeal held:
- “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. It will not be a sufficient ground for review that another judge could have taken a different view of the matter.
21. In the case of *In re Estate of Onesmus Kibira Wanjohi (Deceased)* (Succession Cause 110 of 2002) [2025] KEHC 4079 (KLR) (25 March 2025) (Ruling) the High Court held that review in succession proceedings is guided by Order 45 and is premised on a mistake or error apparent on the record, or discovery of new matter that could not have been discovered with due diligence.
22. In *re Estate of Mathayo Arwa (Deceased)* [2025] KEHC 2899 (KLR), the court reiterated the three grounds under Order 45 and stressed that the applicant must demonstrate that the new matter was not within their knowledge despite due diligence.
23. The gravamen of the Applicant’s case is that certain parcels of land forming part of the estate that is Isukha/Murhanda/381 and Isukha/Mukhulusu/370 were sold to third parties during the pendency of the succession proceedings and were therefore unavailable for distribution.
24. The Applicant contends that these facts were not within the knowledge of the beneficiaries at the time the matter was heard and determined, and that implementation of the judgment would occasion hardship and displacement.
25. The Respondent, on the other hand, maintains that these matters were fully canvassed during the hearing, and that the alleged sales were neither new nor unknown to the parties. In particular,



it is asserted that Parcel Isukha/Mukhulusu/370 had been given inter vivos to Adriano Libasia Muyale, who subsequently disposed of it and acquired alternative land where his family, including the Applicant, settled; and Parcel Isukha/Murhanda/381 remains registered in the name of the deceased's widow and is available for transmission to Calistus Muyale Ford.

26. I have perused the proceedings from the court record and the evidence adduced during the hearing of the succession cause. It is evident that the issue of disposal of Isukha/Mukhulusu/370 by Adriano Libasia Muyale was a live issue, testified to by witnesses including Shimanga Madasio and Simon Witindi Ayisi. The court was very clear that the land parcel was already issued to Adriano Libasia and that he was adequately provided for. If he decided to sell off the land and settle his family elsewhere, his son, the applicant, cannot come to claim that they will be disadvantaged since their father already had his share of the estate and he decided to dispose of it.
27. The land parcel Isukha/Murhanda/381 is still in the name of Deresina Khavugwi Muyale, who is the widow of the deceased and not a Stanger and can easily be transmitted to the grandson and beneficiary Calistus Muyale Ford as per the judgment dated 31/01/2024
28. This Court agrees with the Respondent that these matters were not only within the knowledge of the parties but were key to the court's reasoning in the judgment delivered on 31st January 2024.
29. In Republic v Advocates Disciplinary Tribunal ex parte Apollo Mboya [2019] eKLR, the Court held that: "For a matter to qualify as new and important evidence, it must be evidence that was not available at the time of trial and which could not with reasonable diligence have been obtained."
30. The Applicant has not demonstrated that the alleged facts could not, with due diligence, have been presented before the court prior to the delivery of judgment. What the Applicant seeks is, in effect, a reevaluation of evidence already considered by the court. No mistake or error apparent on the face of the record has been pointed out, nor has any other sufficient reason been advanced to justify review. The application appears to be an attempt to re-litigate issues already determined, which is not the purpose of review. As held in *Muyodi v Industrial and Commercial Development Corporation & Another* [2006] 1 EA 243, review is not a mini-appeal and cannot be used to correct perceived errors in judgment.
31. Upon a careful re-evaluation of the material placed before this Court, I am not persuaded that the Applicant has satisfied the statutory threshold for review.
32. In the result, the Notice of Motion dated 24th May 2024 is found to be devoid of merit and is hereby dismissed.
33. This being a family matter each party shall bear its own costs.
34. Right of Appeal 30 days.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 22ND DAY OF JANUARY, 2026.

S. N MBUNGI

JUDGE

In the presence of:-

CA: Ang'onga/Nekesa

Mr. Manyoni for the Applicant present online.

Mr. Mukavale J for the Respondent present.

