



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**In re Estate of Kariuki Wambugu (Deceased) (Succession Cause
474 of 2004) [2026] KEHC 1018 (KLR) (3 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1018 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 474 OF 2004
DKN MAGARE, J
FEBRUARY 3, 2026
IN THE MATTER OF THE ESTATE OF KARIUKI WAMBUGU (DECEASED)**

BETWEEN

CECILIA NJERI KARIUKI APPLICANT

AND

ANN MUTHONI KARIUKI 1ST RESPONDENT

IRENE WANJIKU KARIUKI 2ND RESPONDENT

JERIOATH NJERI KARIUKI 3RD RESPONDENT

REGINA WAMBUI KARIUKI 4TH RESPONDENT

STANLEY KABAIBU KARIUKI 5TH RESPONDENT

RULING

1. This matter was dealt with by this court on 27/3/2025, and the parties were present in court. In that ruling, I stated as follows:
 1. The said parcel cannot be subdivided into 19 portions. It is thus not possible to share the rocky parts equally. In keeping with the agreement between the parties, I make the following orders:
 - a. The grant be rectified as per Map No. 2 with amendments as per C.
 - b. The land subdivision shall respect as much as possible the current occupation in terms of position.
 - c. The parcel measuring 1.011 Ha shall be divided into 2, to be shared in the ratio of 12:7 between the first and second house, respectively.



- d. The beneficiaries to choose in whose names the said common area is to be registered or the court shall appoint.
 - e. The portions being common shall be for use by members of each house equally.
 - f. The County Surveyor to complete Map “B” with the aforesaid amendments.
 - g. The administrators to complete transmission by 25/9/2025.
2. The applicants are again before this court seeking the following orders:
- a. the court to review the orders issued on 27.03.2025 for the following orders:
 - i. The parcel means 1.011 Ha to be inherited by the first house only.
 - ii. The second house (applicant house) out of the parcel of land remaining after excision of the rocky part, share be one block (sic).
 - iii. The grant be rectified, and amendments by the surveyor be done. The application was supported by Cecilia Njeri Kariuki.
3. The grounds are that the applicant is not interested in the rocky part. They also state that they should not be mixed with the first house. The two houses were not mixed as the deceased left each house on its own share.
4. Though disguised as a review, it is in essence an appeal of the orders of the court. The court herein was applying the decision of the court, Mumbua T. Matheka, given in this matter on 12.10.2018. In that decision, the court held, inter alia as follows:
- a. Section of (of the *Law of Succession Act*) to apply to the deceased’s property:
 - i. Nyeri/Waraza/125
5. The court in the first ruling tried to settle the parties in compliance with that judgment. The applicant is now seeking a second review. However, there is no room for a second review.
6. An order for review as far as it relates to succession is anchored in Section 80 of the *Civil Procedure Act* states that:
- “ 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”.
- Section 63 (e) of the *Civil Procedure Act* states that:
- “In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed make such other interlocutory orders as may appear to the court to be just and convenient
7. Order 45 of the Civil Procedure Rules provides for Review and it states 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 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”

8. I associate myself with the reasoning of Kuloba J (as he then was) in *Lakesteel Supplies vs. Dr. Badia and Anor Kisumu HCCC No. 191 of 1994* where he opined that:

“The exercise of review entails a judicial re-examination, that is to say, a reconsideration, and a second view or examination, and a consideration for purposes of correction of a decree or order on a former occasion. And one procures such examination and correction, alteration or reversal of a former position for any of the reasons set out above. The court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in Order 44 rule 1, of the Civil Procedure Rules. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. It can only lie if one of the grounds is shown, one cannot elaborately go into evidence again and then reverse the decree or order as that would be acting without jurisdiction, and to be sitting in appeal. The object is not to enable a judge to rewrite a second judgement or ruling because the first one is wrong...On an application for review, the court is to see whether any evident error or omission needs correction or is otherwise a requisite for ends of justice. The power, which inheres in every court of plenary jurisdiction, is exercised to prevent miscarriage of justice or to correct grave and palpable errors. It is a discretionary power. In the present application, it has not been said or even suggested that after the passing of the order sought to be reviewed, there is a discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the applicant’s knowledge or could not be produced by him at the time when the ruling was made.”

9. Order 45 of the Civil Procedure Rules is applicable to succession by dint of Rule 63 of the Probate and Administration Rules. The same provides as follows:

- 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 Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (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.
10. However, a review can only be undertaken once. The decision of Matheka J was never appealed, nor was the decision of the Court delivered on 27.03.2025. Consequently, if the parties were dissatisfied with those decisions, the proper course was to lodge an appeal. That window has since closed. Litigation must come to an end, and the parties should forever hold their peace.
11. In the course of securing the parties before me, I was informed, and I duly noted that the name of Mary Wangui Wambugu is indicated as Mary Wangui Kariuki in the confirmed grant. The confirmed grant is rectified therefore to read Mary Wangui Wambugu, Identification Card No. 10325885, instead of Mary Wangui Kariuki, wherever they appear.
12. The application dated 12/9/2025 is accordingly dismissed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 3RD DAY OF FEBRUARY, 2026. EX TEMPORE RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of: -

Mary Wangui

Regina Wambui

Ann Muthoni

Stanley Kabaiku

Lilian Ruguru

Irene Wanjiku

Lilian Wanjiku

Simon Gikungu

Court Assistant - Michael

