

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAROK

SUCCESSION CAUSE NO. 3 OF 2022

(Formerly Naivasha Succ. Cause No. 128 of 2015)

(CORAM: HON. CHARLES M. KARIUKI – J)

IN THE MATTER OF THE ESTATE OF KIROTIE OLE BUTU (DECEASED)

PETER ORIPU BUTU.....1ST APPLICANT

MUSA KAMBO..... 2ND APPLICANT

VERSUS

ALICE KIMORI OGETO..... RESPONDENT

AND

FELISTA WAMAITHA KIROTIEINTERESTED PARTY

RULING

19/02/2026

Introduction

- 1) This ruling concerns the Notice of Motion dated 25th February 2025 by the Applicants, Peter Oripu Butu and Musa Kambo, seeking review of this Court’s ruling delivered on 31st July 2024 in respect of the estate of the late Kirotie Ole Butu (Deceased).
- 2) The impugned ruling adopted and recognized an Alternative Justice System (AJS) award dated 24th October 2023 as an order of the Court pursuant to Article 159(2)(c) of the Constitution.

3) The Applicants now invite this Court to revisit, review, and set aside that decision.

The Application

- 4) The Applicants, Peter Oripu Butu and Musa Kambo, have moved the Court by a Notice of Motion dated 25th February 2025 brought under Order 45 of the Civil Procedure Rules, Sections 1A, 1B, 3A and 80 of the Civil Procedure Act, seeking review of this Court's ruling delivered on 31st July 2024 in respect of the estate of the late Kirotie Ole Butu.
- 5) The application is expressed to be urgent and is accompanied by a Certificate of Urgency sworn by learned counsel, Mr. James Ochege Onduso, who avers that the ruling of 31st July 2024 was adverse to the Applicants and that the same is premised on an error apparent on the face of the record, thereby warranting review.
- 6) The Applicants seek that the matter be certified as urgent, that service be dispensed with in the first instance, that there be a stay of proceedings pending determination of the application, and that the ruling delivered on 31st July 2024, together with the consequential proceedings and orders, be reviewed, varied, and/or set aside. They also seek costs of the application.
- 7) The application is grounded on the contention that the Court, in its ruling of 31st July 2024, upheld an Alternative Justice Systems (AJS) award dated 24th October 2023, which award allegedly suffered from procedural impropriety. The Applicants state that, as administrators of the estate, they were not informed of the purported meeting of 24th October 2024 at which the award was made. They further contend that they were recorded as having been present at the meeting despite being absent, and that the minutes relied upon contained irregularities, including the inclusion of persons who were not present and alleged discrepancies in signatures.

- 8) It is further asserted that the Court failed to consider minutes of another meeting allegedly held on 28th October 2023, which, according to the Applicants, bore verified signatures of members present. The Applicants also contend that the AJS award improperly declared the Respondent and the Interested Party as beneficiaries of the estate, notwithstanding that they are allegedly not dependants within the meaning of the Law of Succession Act.
- 9) In the Supporting Affidavit sworn by Peter Oripu Butu, the deponent reiterates the foregoing grounds and annexes, inter alia, copies of the impugned ruling, the minutes of the AJS meeting of 24th October 2023, alleged evidence of irregularities in the said minutes, minutes of the meeting of 28th October 2023, and a letter from the area Chief regarding beneficiaries. The Applicants maintain that the ruling was founded on an error apparent on the face of the record and that it is in the interests of justice that the same be reviewed and set aside to preserve the estate.

Summary of the Impugned Ruling

- 10) In the ruling delivered on 31st July 2024 in Narok HCFP&A No. 3 of 2022 concerning the estate of the late Kirotie Ole Butu, the Court addressed the question of whether to adopt and recognize an Alternative Justice System (AJS) award dated 24th October 2023.
- 11) The Court noted that on 9th October 2023, the parties informed the Court of their intention to resolve the dispute through AJS, and the matter was accordingly referred for resolution. The parties were directed to attend an AJS meeting scheduled for 21st October 2023. It was subsequently reported by counsel for the respective parties that an AJS meeting was held on 24th October 2023 in the presence of all parties and family members, and minutes of the elders' resolution were filed in Court.

- 12) The Court further observed that some parties, dissatisfied with the AJS resolution of 24th October 2023, convened another meeting on 28th October 2023, allegedly excluding other parties, and filed separate minutes of that meeting.
- 13) According to the minutes of the AJS meeting of 24th October 2023, it was resolved that the suit properties had already been divided between two houses — that of Mama Kaka and that of the late Mama Oriku — on the basis that Mama Peter had left the matrimonial home approximately 30 years earlier.
- 14) It was agreed that each of the two houses would allocate three (3) acres of land to Mama Peter, a proposal she accepted. It was further recorded that some parties, namely Oriku and Kambo together with certain elders, were dissatisfied with the resolution and intended to appeal to the Court, particularly in view of the fact that title deeds had already been issued.
- 15) In determining the matter, the Court undertook an exposition of the constitutional underpinning of AJS under Article 159(2)(c) of the Constitution. The Court emphasized that the Constitution does not create AJS but recognizes it as a legitimate and complete dispute resolution mechanism operating outside the formal court system. The Court underscored the principle of party autonomy (agency theory), noting that the parties had voluntarily and knowingly submitted themselves to AJS resolution while represented by counsel, thereby satisfying the first jurisdictional test.
- 16) The Court further held that the dispute — whether the objector who had left the matrimonial home was entitled to inherit from the estate — was not excluded from AJS determination by any constitutional, statutory, or public policy provision. Consequently, the AJS process was found to have been undertaken within the jurisdiction.

17) The Court expressed disapproval of the unilateral meeting of 28th October 2023, terming it inconsistent with the principles of AJS and reiterating that a dissatisfied party may only challenge an AJS outcome on grounds of proportionality or procedural impropriety, and not by disregarding it or convening a parallel resolution forum.

18) Upon applying the relevant tests, the Court found that the AJS award of 24th October 2023 did not suffer from procedural impropriety or proportionality infirmity. The Court therefore adopted and recognized the said AJS award as an order of the Court, while encouraging obedience to AJS outcomes and noting that recognition enables enforcement through the court process where necessary.

The Replying Affidavit of Alice Kimori Ogeto

19) The Respondent, Alice Kimori Ogeto, swore a Replying Affidavit on 16th July 2025 opposing the Applicants' Notice of Motion dated 25th February 2025.

20) In response to the allegations of procedural impropriety in the AJS meeting held on 24th October 2023, she contends that such assertions are misleading and intended to misdirect the Court. She avers that the Applicants had previously sought the Court's intervention to denounce the mediation meeting of 23rd/24th October 2023, but the learned Judge declined to do so, having found mischief on the part of the Applicants.

21) She further deposes, on advice of counsel, that the grounds advanced do not meet the legal threshold for review and are therefore misconceived. She also contends that the application suffers from laches, having been brought after undue delay contrary to the requirements governing review applications.

22) The Respondent maintains that the Applicants actively participated in the AJS process and were part of the resolutions reached on 24th October 2023, only to

- subsequently reject the outcome upon realizing that they were already registered as proprietors of the deceased's parcel of land to the exclusion of other beneficiaries. She terms this conduct dishonest and contrary to the spirit and intent of mediation.
- 23) She further states that the Court had already made a finding that the meeting allegedly held on 28th October 2023 was unnecessary and unscheduled, the matter having been concluded through mediation on 24th October 2023. It is her position that the Applicants are estopped from rejecting the outcome of a process in which they participated and consented to the findings.
- 24) The Respondent also avers that she was a spouse and dependant of the deceased during his lifetime, that she buried the deceased, and that she is being discriminated against by the Applicants, whom she describes as stepsons of the deceased. She alleges that the Applicants obtained a grant of representation without involving her or other beneficiaries. She disputes that there is any error apparent on the face of the record, warranting review, and urges the Court to reaffirm the ruling delivered on 31st July 2024 and dismiss the application with costs.

The Replying Affidavit of Felistus Wamaitha Kirotie

- 25) The Interested Party, Felistus Wamaitha Kirotie, swore her Replying Affidavit on 14th July 2025 in opposition to the application for review.
- 26) She contends that the allegations of procedural impropriety in the meeting of 24th October 2023 are an attempt to appeal the Court's decision through the back door and to mislead the Court. She avers that the issues now raised were previously canvassed before the learned Judge, who declined to denounce the mediation outcome, and therefore the matter is in effect res judicata.

- 27) On advice of counsel, she deposes that the grounds advanced do not meet the threshold for review or appeal of an AJS determination and that the application suffers from laches and contravenes the procedural requirements governing review applications.
- 28) The Interested Party maintains that the Applicants were present and participated in the mediation process before the village elders, who considered various factors before arriving at their decision. She contends that the Applicants are now seeking to delay the process because their names already appear on the title deed, thereby enjoying possession of the estate property, and that their rejection of the mediation decision undermines the constitutional recognition of AJS.
- 29) She reiterates that the Court had already found the purported meeting of 28th October 2023 to have been unnecessary and unscheduled, since the dispute had been conclusively resolved through the mediation meeting of 24th October 2023.
- 30) The Interested Party further asserts that both the Chief's letter and the elders' decision affirm her position as the first wife of the deceased with children. She states that her national identity card bears the deceased's name as evidence of marriage and that the elders confirmed she was properly married in accordance with law and custom. She alleges that the Applicants disinherited her and her children and misled the Court in obtaining the grant of representation without involving her despite knowledge of her status as the deceased's wife.
- 31) She denies that there exists any error apparent on the face of the record warranting review and urges the Court to dismiss the application for review with costs.

The Applicants' Submissions

32) The Applicants filed submissions dated 28th October 2025 in support of their application for review.

(a) On the Threshold for Review under Order 45 and Section 80

33) The Applicants submit that they have satisfied the requirements for review under Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Civil Procedure Act. They argue that the ruling of 31st July 2024 adopted an AJS award that was founded on material misrepresentation, forged signatures, and falsified attendance records.

34) They contend that their names were recorded as having attended the AJS meeting of 24th October 2023, yet they were neither notified nor present. They assert that this constitutes an error apparent on the face of the record and amounts to procedural injustice warranting review.

35) Reliance is placed on **Republic v Advocates Disciplinary Tribunal & another Ex Parte Apollo Mboya [2019] eKLR**, where the Court held that review is available where the record is tainted by procedural injustice or misrepresentation.

36) They also cite **National Bank of Kenya Ltd v Ndungu Njau [1997] eKLR**, where the Court of Appeal stated that an error apparent on the face of the record must be self-evident and not require elaborate argument.

37) The Applicants further rely on **Benjoh Amalgamated Ltd v Kenya Commercial Bank Ltd [2014] eKLR**, arguing that the doctrine of res judicata cannot bar a review application where fraud, misrepresentation, or error is alleged.

(b) On the Validity of the AJS Award

- 38) The Applicants acknowledge the constitutional recognition of AJS under Article 159(2)(c) but argue that legitimacy depends on voluntariness, transparency, and genuine participation.
- 39) They rely on **Republic v Principal Secretary Ministry of Defence & another Ex Parte George Kariuki [2022] eKLR**, for the proposition that AJS must be rooted in party agency and free consent.
- 40) Further reliance is placed on **Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR**, where the Court cautioned against uncritical adoption of alternative processes without ensuring fairness and inclusivity.
- 41) The Applicants argue that the AJS award of 24th October 2023 was procedurally defective, fraudulently constructed, and unjustly adopted, and that the exclusion of the subsequent meeting of 28th October 2023 fatally undermined the integrity of the process.

(c) On Costs

- 42) On costs, the Applicants rely on Section 27 of the Civil Procedure Act, which vests discretion in the Court to award costs.
- 43) They cite **Republic v Minister for Agriculture & 2 Others Ex Parte W'njuguna & Others (2006 eKLR)**, where the Court held that discretion on costs must be exercised judiciously, and **Rai & Others v Rai & Others (2014 KESC 31 KLR)**, where the Supreme Court emphasized that costs are compensatory and reflective of the conduct of the parties.
- 44) Further reliance is placed on **Kipkebe Limited v Kenya Planters Co-operative Union [2020] eKLR**, where the Court held that costs should fall upon the party whose conduct necessitated litigation.

45) The Applicants therefore pray that the ruling of 31st July 2024 be reviewed and set aside; that the AJS award dated 24th October 2023 be declared procedurally defective and inadmissible; that consequential proceedings be stayed; and that costs of the application and the suit be awarded to them.

Interested Party's Submissions

46) The Interested Party filed written submissions dated 24th October 2025 opposing the Applicants' Notice of Motion dated 25th February 2025 seeking review of the Court's ruling delivered on 31st July 2024.

(a) On Whether the Applicants Have Met the Threshold for Review

47) The Interested Party submits that the application fails to meet the strict threshold for review under Order 45 Rule 1 of the Civil Procedure Rules, 2010, and Section 80 of the Civil Procedure Act (Cap 21, Laws of Kenya). She sets out the statutory grounds for review, namely: discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or any other sufficient reason; and that the application must be made without unreasonable delay.

48) It is submitted that the Applicants have neither demonstrated discovery of new and important evidence nor established any mistake or error apparent on the face of the record. Their grievance, it is argued, amounts to mere dissatisfaction with the outcome of the AJS process and the Court's ruling adopting it.

49) Reliance is placed on **Kithoi v Kioko [1982] KLR 177**, where the Court held that an application for review must strictly prove the statutory grounds, failing which it cannot be granted. Further reliance is placed on **Arun C Sharma v Ashana Raikundalia t/a A Raikundalia & Co Advocates & 2 others[2014] KEHC 2430 (KLR)**, where the High Court dismissed a review application on the basis that no new

evidence or error apparent on the record had been demonstrated, and emphasized that equity will not aid a litigant who approaches the Court with unclean hands.

50) The Interested Party contends that the Applicants' attempt to convene a second meeting on 28th October 2023, after having participated in the AJS meeting of 24th October 2023, was unilateral and properly rejected by the Court. She argues that the present application is an attempt to re-litigate issues already settled and adopted by the Court.

(b) On the Validity and Constitutionality of the AJS Process

51) The Interested Party relies on Article 159(2)(c) of the Constitution of Kenya, 2010, which mandates courts to promote alternative dispute resolution mechanisms, including traditional dispute resolution. She submits that the matter was referred to AJS by consent of all parties and that the AJS meeting of 24th October 2023 was attended by all parties, including the Applicants, who fully participated in the deliberations.

52) It is argued that the AJS proceedings complied with the principles of natural justice, particularly the audi alteram partem rule, and that the Court expressly found the award to be proportional and procedurally fair before adopting it. The award granting the Interested Party six (6) acres is said to have been equitable and justified in the circumstances.

53) The Interested Party emphasizes that there was no evidence of bias, fraud, or procedural irregularity, and that the Applicants cannot now impeach a process in which they participated.

(c) On Abuse of Court Process

- 54) The Interested Party further submits that the review application constitutes an abuse of the court process, aimed at delaying enforcement of the AJS award and enabling the Applicants to continue occupying the entire parcel of land.
- 55) Reliance is placed on Order 2 Rule 15(1) of the Civil Procedure Rules, 2010, which empowers the Court to strike out pleadings that are frivolous, vexatious, or an abuse of process.
- 56) The Interested Party cites **Muchanga Investments Limited v Safaris Unlimited (Africa) Limited & 2 Others Civil Appeal No. 25 of 2002 [2009] eKLR**, where the Court of Appeal defined abuse of court process as the improper use of the judicial process to the irritation of an opponent and to interfere with the efficient administration of justice.
- 57) Further reliance is placed on **Satya Bhama Gandhi v Director of Public Prosecutions & 3 others [2018] eKLR**, where the Court outlined instances constituting abuse of court process, including multiplicity of actions and misuse of judicial mechanisms, and on **JWK v IKE Civil Appeal E056 of 2023; [2024] KEHC 11647 (KLR Family)**, where the Court adopted the principles in **Satya Bhama Gandhi** in finding a matter to be an abuse of process.
- 58) The Interested Party concludes that the application is frivolous, vexatious, and intended solely to frustrate enforcement of the AJS award, and urges the Court to dismiss it with costs.

ISSUES FOR DETERMINATION

59) The issues for determination are:

- i. Whether the Applicants have met the threshold for review under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules.**

- ii. **Whether the AJS award of 24th October 2023 suffered procedural impropriety.**
- iii. **Whether the application constitutes an abuse of the court process.**
- iv. **Who should bear the costs of the application.**

ANALYSIS AND DETERMINATION

(i) Legal Threshold for Review

60) Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules permit review on three grounds:

- i. Discovery of new and important matter or evidence;
- ii. Error apparent on the face of the record;
- iii. Any other sufficient reason.

61) In **National Bank of Kenya Ltd v Ndungu Njau**, the Court of Appeal held that review is not an appeal in disguise and that an error apparent must be self-evident, not one that requires elaborate argument to establish.

62) Similarly, in **Kithoi v Kioko**, the Court emphasized strict compliance with statutory grounds.

63) The Applicants' grievance essentially challenges the Court's factual findings regarding the procedural propriety of the AJS meeting. Allegations of forgery and absence from proceedings require evidentiary interrogation and possibly forensic examination. They are not self-evident errors on the face of the record.

64) In the ruling of 31st July 2024, this Court expressly considered whether the AJS award suffered procedural impropriety and found that it did not. The present application seeks to reopen that determination. That is a matter for appeal, not review.

(ii) Alleged Procedural Impropriety in the AJS Award

65) Article 159(2)(c) of the Constitution obligates courts to promote alternative dispute resolution mechanisms.

66) This Court previously found that:

- i. The parties voluntarily submitted to AJS;**
- ii. The dispute was within AJS's jurisdiction;**
- iii. The award did not suffer procedural impropriety.**

67) The Applicants now allege non-participation and forgery. However, such allegations were not promptly raised immediately after the meeting. The subsequent meeting of 28th October 2023 was convened unilaterally and excluded other parties.

68) Allegations of fraud must be strictly proved and cannot be determined summarily in a review application. As held in **Arun C Sharma v Ashana Raikundalia t/a A Raikundalia & Co Advocates & 2 Others**, review is not a forum for re-litigation.

69) The Applicants have not demonstrated discovery of new and important evidence that was unavailable at the time of the earlier ruling.

(iii) Abuse of Court Process

70) In **Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 Others**, abuse of process was described as misuse of the judicial process in a manner that is oppressive or vexatious.

71) While this Court does not find mala fides on the part of the Applicants, the application seeks to reopen issues conclusively determined. It amounts to a re-argument of matters already adjudicated.

(iv) Costs

72) Under Section 27 of the Civil Procedure Act, costs follow the event unless the Court orders otherwise.

73) The Applicants have not succeeded in establishing grounds for review. There is no justification to depart from the general rule.

CONCLUSION

74) The Applicants have failed to demonstrate:

- i. An error apparent on the face of the record;**
- ii. Discovery of new and important evidence;**
- iii. Any sufficient reason warranting review.**

75) What is sought is effectively a rehearing of matters already determined. The proper recourse lay in appeal.

ORDERS

76) Accordingly:

- a) The Notice of Motion dated 25th February 2025 is hereby dismissed.**
- b) The ruling delivered on 31st July 2024 remains in force.**
- c) The Applicants shall bear the costs of the application.**

77) Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS

APPLICATION, THIS 19TH DAY OF FEBRUARY, 2026.

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CHARLES KARIUKI

JUDGE