

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

SUCCESSION CAUSE NO. 194 OF 2015

IN THE MATTER OF THE ESTATE OF STANLEY

GITAU MUNGAI (DECEASED)

RULING

1. By a notice of motion application dated 2nd October, 2025 brought under the provisions of Order 45 Rule 1 of the Civil Procedure Rules 2010, Section 1A and B, 3A, 80 & 99 of the Civil Procedure Act Rule 63 of Probate and Administration Rules and all enabling provisions of the Law, the applicant is seeking for the *following orders*;

a) That this Honourable court be pleased to review, set aside and/or vacate the ruling orders issued by the Honourable court on 22nd March, 2017, regarding the distribution of the estate of the deceased.

a) That this Honourable court be pleased to adopt and confirm the mode of distribution contained in paragraph 5 of the supporting affidavit.

b) That the costs of the application be costs in the cause.

2. The application is based on the grounds thereto and affidavit sworn jointly, by Elizabeth Ruguru Gitau and Benjamin Njogu Njenga. The deponents aver that; the Honourable court confirmed the grant of letters of administration on 22nd March, 2017 and issued a certificate of confirmation of the grant accordingly.
3. That after the confirmation of the grant, Kenya Electricity Transmission Company Limited (KETRACO) compulsorily acquired 0.3899 hectares from title number Kijabe/Kijabe Block 1/3597 for purposes of erecting electric power transmission lines.

4. That the beneficiaries have all agreed on a new mode of distribution hence necessitating the application for review of the orders dated 22nd March, 2017.
5. That in addition, the deponents have indicated at paragraph 5 of the supporting affidavit the new proposed mode of distribution agreed on by all the parties and have annexed to the affidavit in support of the application a consent signed by all beneficiaries as to the mode of distribution.
6. It is further averred that the beneficiaries have engaged a Surveyor who has drawn a mutation map, (a copy of which has been annexed to the supporting affidavit) which reflect the desired mode of distribution.
7. Upon considering the application, the court directed that the beneficiaries attend court for examination and on 15th October, 2025, they were examined

although one beneficiary was absent and the other did not have his ID card, consequently, the examination proceeded on 10th November, 2025.

8. In considering the application, I note that the main prayer is for court to ‘review, set aside and/or vacate’ the ruling delivered on 22nd March, 2017 regarding distribution of the estate of the deceased.

9. In that regard, pursuant to Rule 63 of the Probate and Administration Rules, a court can review, vary or revoke an order confirming the grant of representation. The subject Rule states as follows;

“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. Pursuant to the afore, Rule 63 incorporates the provisions of Order 45 of the Civil Procedure Rules 2010 which states that: -

(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.

11. Consequently, for the application herein to succeed, the applicants must meet the threshold under Order 45 for review of an order. The key aspects of the Order 45 are:

(a) Discovery of New Evidence: The applicant must show they discovered new, crucial evidence that was not within their knowledge or could not be produced at the time of the order, despite exercising due diligence.

(b) Error Apparent on the Face of Record: The mistake must be obvious, self-evident, and not require a long-drawn-out reasoning process or re-evaluation of evidence.

(c) "Other Sufficient Reason": This is interpreted ejusdem generis (similar to the first two grounds), meaning it must be

analogous to a discovery of new evidence or an error of law on the record.

(d) No Unreasonable Delay: The application must be filed promptly. Delays of a few months (e.g., 4 months) have been deemed unreasonable, and even a delay of a few days requires explanation.

12. To revert back to this matter, I find that the reason advanced for the order of review is that KETRACO has compulsorily acquired 0.3899 hectares from title Kijabe/Kijabe Block 1/3597.

13. The question is, have the applicants provided evidence in proof of such acquisition. In the instant matter, the applicants have annexed to the affidavit in support of the application the following documents;

a) A copy of grant of Letters of Administration Intestate dated 7th April, 2016, marked 'LRG & BNN 1'.

b) A copy of a certificate of confirmation of grant dated 22nd March, 2017 marked ERG & BNN 2.

c) A copy of a letter of consent executed by all beneficiaries marked 'ERG & BNN 3' and

d) A copy of mutation map marked 'ERG & BNN 4'.

14. From the afore documents, there is no shred of evidence of acquisition of the subject land yet that is the basis of the application.

15. In that case, the application cannot be granted as prayed. The costs thereof be in the cause.

It is so ordered.

Dated, delivered and signed on this 18th day of February, 2026.

GRACE L. NZIOKA

JUDGE

In the presence of;

Ms Omondi for the applicant

Ms Hannah: Court Assistant