

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO.19 OF 2020

**IN THE MATTER OF THE ESTATE OF KIBII ARAP KOSKEI
(DECEASED)**

**SELINA CHEPSAT KIPKOECH.....1ST
ADMINISTRATOR**

**MARGARET CHELIMO SANG.....2ND
ADMINISTRATOR**

**MARGARET CHEROTICH KIMENGO.....3RD
ADMINISTRATOR**

AND

**RUSY CHEPKORIR.....1ST
APPLICANT**

**HELLEN CHEMAYO RUTO.....2ND
APPLICANT**

RULING

1. Before me is an application dated 3/6/2025 brought in by Rusy Chepkorir and Hellen Chemayo Ruto seeking for the following reliefs namely;

- (i) That this court be pleased to order the joinder of Rusy Chepkorir and Hellen Chemaiyo Ruto as interested parties herein.***
- (ii) That upon granting prayer (i) above this Hon Court be pleased to review, vary or set aside the judgment delivered on the 25/1/2024.***

2. The grounds upon which this application is brought are listed as follows;

- (a) That the administrators obtained the grant of letters fraudulently by failing to disclose to the court all material facts in this cause.***
- (b) That the applicants were never informed about this succession cause.***
- (c) That the applicants were not included as beneficiaries in the estate of the late Kibii Arap Koskei.***
- (d) That dowry was paid out with respect to the applicants and that the same make them direct beneficiaries.***
- (e) That the applicants were wives to the deceased wife in accordance with Kalenjin Customary Laws.***
- (f) That the intended interested parties/applicants were allocated land after the demise of Kibii Arap Koskei (deceased) by the***

children of the deceased where they have been living.

(g) That it is on the above basis that they be enjoined as interested parties and have the judgment reviewed.

3. This application is supported by the affidavit of Rusy Chepkorir sworn on 3/6/2025 where she depones that the 2nd wife to the deceased Tapkile Kibii did not bear any children of her own and was allowed as such to resort to Kalenjin tradition of finding a wife to bear her children.
4. She further avers that she was married together with Hellen Chemayo Ruto and bore children.
5. That when she was married she already had 2 children who were taken as the children of the deceased.
6. She further avers that the 2nd wife of the deceased passed on in 1988 but she continued staying with the deceased till his demise in 2004 which makes her children dependants/beneficiaries to the estate herein.
7. That she stayed in the estate for a while and moved out after some hostility was directed at her.
8. That the Area Chief is aware about their claims.
9. The respondents have opposed the application through the replying affidavit of Selina Chepsat Kipkoech sworn on 14/6/2025.

10. The respondents submit that the application before court does not meet the threshold of Order 45 of the Civil Procedure Rules.
11. The respondents deny the applicants' claim that they are dependants and contend that the applicants' are being misled by one Mary Chepkoskei.
12. That the said Mary Chepkoskei is a granddaughter of the deceased who was dissatisfied with the judgment dated 11/1/2024 and that she has been frustrating the finalization of this matter.
13. That the 1st applicant only related with a grandson of the deceased who sired children with her.
14. That the grandsons have affinity to alcohol and the applicant baited them with alcohol and destabilized their respective families.
15. That the applicants have never lived with any of the grandsons of the deceased and the relationships were only limited to having affairs.
16. That the 2nd applicant is stranger to the deceased and only related to one Solomon Kiplimo Kirarei who was a grandson to the deceased and that she lacks locus standi to bring this application.
17. This court has considered this application and the response made. This court does not wish to go into much details of the issues raised in this application because of the manner in which the application has been framed. The same

is a misconception. The applicants seek for joinder and review of the judgment delivered by Hon Mrima J on 25/1/2024.

18. An application for review under Order 45 Rule (1) of the Civil Procedure Rules is quite limited in scope. The provisions of Order 45 Rule 1(a) and (b) provides;

“(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.”

From the above, it is quite apparent that an application for review can only be made by parties to a suit and upon discovery of a new and important fact or evidence which was not within the knowledge of the applicant upon due exercise of diligence at the time of making the order or decree.

19. The present application is not about discovery of a new or important fact. The applicants claim they are dependants or beneficiaries of the deceased in this cause but were left out or locked out of the succession proceedings. That the administrators obtained the grant herein fraudulently by failing to disclose to the court material facts. The facts though disputed relates to their claim based on dependency. The cited provisions do not address the applicants' concerns in this matter.

20. The applicants' claims are provided and squarely fall under the provisions of Section 76 of the Law of Succession Act. Section 76 of the Law of Succession Act provides;

“A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.”

21. The applicants are claiming to be interested parties. The above provisions provide that if they have any claim falling under any of the grounds above, they should move the court for revocation of grant. The application for review as I have observed above being limited in scope is misconceived, bad in law and incompetent. The applicants being duly represented by counsel are fully aware of the proper avenue to seek the reliefs being sought here. The application dated 3/6/2025 for the aforesaid reasons is untenable and is hereby struck out but I will not make any order as to costs.

**DELIVERED, DATED and SIGNED at KITALE this11th day of
.....MARCH....., 2026.**

HON JUSTICE R.K. LIMO
KITALE HIGH COURT

Ruling delivered in open court

In the presence of

Najumbia holding brief for Ndinyo of respondent

Atudo for the applicant

Duke/Chemosop - Court assistants