

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
SUCCESSION CAUSE NO. 3 OF 2015

**IN THE MATTER OF THE ESTATE OF THE LATE DAVID
KIMUGE CHEPKWONY alias DAVID KIMUGE P.O
CHEPKWONY (DECEASED)**

**LOICE
CHEPKWONY.....PETITIONER/RESPONDENT**

BITENGO

VERSUS

**WILLY KIPCHIRCHIR
NGENO.....APPLICANT/BENEFICIARY**

RULING

1. The subject matter of this ruling is the motion dated 5th May, 2025 in which **Willy Kipchirchir Ngeno** sought for inter alia:

- (i) THAT this Honourable Court be pleased to review, set aside and/or vary the Judgment delivered on 1st October, 2021 on the issue of co-ownership of Title Number KERICHO/KOIYET S.S./318.**
- (ii) THAT this Honourable Court be pleased to stay of proceedings and distribution of Title Number KERICHO/KOIYET S.S./318 in this succession cause pending the hearing and determination of Kericho ELC. No.E022 of 2025.**

(iii) THAT the costs occasioned in this Application be provided for.

2. The Applicant filed an Affidavit he swore in support of the motion. Despite having been served with the aforesaid motion, the Petitioner/Respondent did not deem it fit to file a response to the Application.
3. I have considered the grounds stated on the motion and the facts deponed in the Supporting Affidavit. The first order, the Applicant sought is an order for review and setting aside of this Court's Judgment delivered on 1st October, 2021 on the issue of co-ownership of title **Kericho/Koiyet S.S./318**.
4. The Applicant also beseeched this Court to grant the second order to stay proceedings and distribution of title **Kericho/Koiyet S.S./318** in this Succession Cause. It is argued that the question of ownership of the aforesaid parcel of land is a matter which falls within the jurisdiction of Environment and Land court, therefore, the Probate and Administration lacked jurisdiction to determine the issue.
5. This Court was urged to consequently review its Judgment of 1st October, 2021 to correct the error apparent on record. It is also pointed out that there is a pending suit before the **Environment and Land Court, Kericho No.E022 of 2025** over the ownership of **L.R. No. Kericho/Koiyet S.S./318**. This Court was asked to stay further proceedings.

6. This Court has been urged to review its decision of 1st October, 2021 on the basis that the Court lacked jurisdiction to determine the Court lacked jurisdiction to determined dispute over ownership of Land.
7. An Application for review may be allowed if there is 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 by him at the time when the decree was passed or on account of some mistake or error apparent on record or for any other sufficient reason.
8. In the instant Application, the Applicant has basically argued that the Court did not have jurisdiction to determine land ownership. In my view that is more of a ground of Appeal not Review. The Application therefore cannot qualify as an Application for Review. I decline to entertain the same.
9. When a Court is alleged to have acted without jurisdiction, it cannot be said to be an error apparent on record. It is a substantial point of law which can be tackled on Appeal as a ground of appeal.
10. This Court has been asked to stay proceedings and or implementation of the Certificate of Confirmation of Grant pending the outcome of the ELC Case. I find the prayer for

stay not merited. It is already admitted that the Court has made a determination on ownership of the estate land. No Appeal has been preferred against the decision.

11. The decision of the ELC will not in any case overturn what has already been determined by this Court. The only way out is for the Applicant to challenge the decision on Appeal. The Application for stay in my view is unmerited.

12. In the end, the motion dated 5/5/2025 is found to be without merit. It is dismissed with each party bearing their own costs.

**Dated, signed and delivered at Kericho this 10th day
of March, 2026.**

.....
**J. K. SERGON
JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Chebets for the beneficiary

Chepkorir for the Petitioner