



**In re Estate of Chepsiror (Deceased) (Succession Cause  
93 of 1993) [2026] KEHC 3085 (KLR) (9 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3085 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 93 OF 1993  
RN NYAKUNDI, J  
MARCH 9, 2026**

**IN THE MATTER OF THE ESTATE OF THE LATE KIPKETER CHEPSIROR (DECEASED)**

**BETWEEN**

**PAUL KIPKORIR KETER ..... 1<sup>ST</sup> PETITIONER  
SAMUEL KIPROP MELI ..... 2<sup>ND</sup> PETITIONER  
ROBERT KIPKEMEI KETER ..... 3<sup>RD</sup> PETITIONER**

**AND**

**JOSEPH KIPTANUI CHIRCHIR & 20 OTHERS ..... INTERESTED PARTY**

**RULING**

1. What is pending before this Honourable Court is a Notice of Motion Application dated 1<sup>st</sup> December 2025 premised under section 47 of the [Law of Succession Act](#), Rule 63 and 73 of the Probate and Administration Rules together with Order 45(1) of the Civil Procedure Rules and Article 159 of [the Constitution](#) of Kenya in which the Applicants are seeking the following orders: -
  - a. That the orders confirming the Grant by this Honorable Court on the 4<sup>th</sup> December, 2007 be and is hereby reviewed and opened so as to include the names of Carren Achieng Onyango, Samuel Kiboi Simotwa, Anne Ochwada, John Aibach Peya, Kiprono Kitur, Joshua Kiplagat Lelei and David Kibwambok Serem.
  - b. That pursuant to Clause No. 1 (above) the Certificate of Confirmation of Grant dated the 4<sup>th</sup> December, 2007 be and is hereby amended to include the names of Carren Achieng Onyango, Samuel Kiboi Simotwa, Anne Ochwada, John Aibach Peya, Kiprono Kitur, Joshua Kiplagat Lelei and David Kibwambok Serem.



- c. That Robert Kipkemei Keter having sold and/or disposed his entire share in the Estate be and is HEREBY removed as administrator and is replaced by Joseph Kiptanui Chirchir to give the administrators herein impetus to complete the process of administration.
  - d. That the Chief Kamagut Location BE and is HEREBY directed to oversee the picking of measurements of all the Interested Parties' shares and beaconing of the same and eventually the issuance of title deeds thereof
  - e. That the administrators BE and are HEREBY ordered to complete the process of administration within a period of one hundred and eighty days from the date of issuance of these orders.
  - f. Costs of this Motion be in the cause.
2. The Application is based upon the following grounds: -
- a. The seven (7) Applicants herein are purchasers of the Estate herein.
  - b. That when the Grant in Representation herein was confirmed they were not present in court.
  - c. The Applicants were not on notice of the date of the confirmation of the grant.
  - d. The Applicants are in possession and occupation of their respective portions.
  - e. The Petitioners are aware of the being and occupation of the Applicants on their respective portions.
  - f. The orders sought will not or at all prejudice the Petitioners as some of them such as Robert Kipkemei Keter have virtually disposed off their shares and moved out.
  - g. There are only two administrators on the ground, Paul Kipkorir and Samuel Kiprop Meli, Robert Kipkemei Keter having sold his entire interest and John Kimeli Sum having died, it will be prudent to release Robert Kipkemei Keter from administration and replace him with Joseph Kiptanui Chirchir.
  - h. It is in the interest of justice that the orders sought be granted to enable the process of administration and distribution be completed.
3. The application is supported by the annexed affidavit of Joseph Kiptanui Chirchir who deponed as follows: -
- a. That am the deponent herein by virtue whereof I have the competence and authority to swear this affidavit.
  - b. That I am the Chairman of all the purchasers of the Estate that is the subject matter of this litigation.
  - c. That I know of my own knowledge Carren Achieng Onyango, Samuel Kiboi Simotwa, Anne Ochwada, John Aibach Peya, Kiprono Kitur, Joshua Kiplagat Lelei and David Kibwambok Serem were not in court on the 4<sup>th</sup> December, 2007 when the Grant in Representation was confirmed by this court.
  - d. That I know of my own knowledge that as the Grant in Representation was being confirmed the individuals named hereinabove were in possession and occupation of their respective portions.



- e. That I know of my own knowledge and it is true that one of the Administrators namely Robert Kipkemei Keter has sold his entire interest/share and moved to settle at Kapsaret.
  - f. That I know of my own knowledge and it is indeed true that one John Kimeli Sum is deceased hence making it difficult for the others to Administer the Estate.
  - g. That I know of my own knowledge that, that is the reason fundamentally that has made the interested parties herein propose my name as one of the Administrators.
  - h. That am advised by my Counsel on record which advice I verily believe to be true that the granting of the prayers herein sought will not prejudice the Administrators in any manner.
  - i. That I know of my own knowledge that the Chief Kamagut Location has been at the forefront just as his predecessor in ensuring that justice is served for the interested parties who are purchasers in the Estate.
  - j. That I know of my own knowledge that it is the wish and desire of all the Applicants herein that the Chief for Kamagut Location be directed by this Honorable court to oversight the process of eventual distribution to ensure each of the parties in this cause gets their fair share or interest.
  - k. That I make this affidavit in support my prayers for the grant of orders as set out in my Motion now before court.
4. I take note that at the time of writing this ruling,

#### **Analysis and Determination**

5. I have read and considered the application and the annexed affidavits in support of the same. There is one sole issue manifest for determination as follows;

#### **Whether the Notice of Motion Application for Review is merited?**

6. The jurisdiction of this Honourable Court to entertain this Application is spelt out in section 47 of the *Law of Succession Act* as read with Rule 73 of the Probate and Administration Rules. The Applicants seek principally that the orders confirming the Grant on 4<sup>th</sup> December 2007 be reviewed and reopened to include their names as purchasers; that the Certificate of Confirmation of Grant be amended accordingly; that one of the administrators be removed and replaced and that the Chief Kamagut Location oversee survey and distribution of the estate.
7. By virtue of Rule 63 of the Probate and Administration Rules, certain provisions of the Civil Procedure Rules apply to succession proceedings, including Order 45 which governs review. A review under Order 45 of the Civil Procedure Rules may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record or for any sufficient reason. Rule 63 of the Probate and Administration Rules has in pari materia imported the provisions of the Civil Procedure Rules and the *Civil Procedure Act*.
8. Order 45 Rule 1 of the Civil Procedure Rules sets down the criteria for review applications as follows: -
- PARA 1.
- Application for review of decree or order:
- SUBPARA 1.
- Any person considering himself aggrieved—



SUBPARA a.

by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

SUBPARA 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.

PARA 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.

9. The Honourable Courts have consistently interpreted the provisions of Order 45 Rule 1 of the Civil Procedure Rules. In *Republic Vs Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR, the Court set out the principles to consider in the review of its own decisions. It was observed;
  - a. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.
  - b. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.
  - c. An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 80.
  - d. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
  - e. A decision/order cannot be reviewed under Section 80 on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
  - f. While considering an Application for review, the court must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
  - g. Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.
  - h. A mistake or an error apparent on the face of the record means a mistake or an error, which is prima-facie visible and does not require any detail examination. In the present case the petitioner has not been able to point out any error apparent on the face of the record.
  - i. Section 80 of the Civil Procedure Code provides for a substantive power of review by a civil court and consequently by the appellate courts. The words occurring in Section 80 mean subject to such conditions and limitations as may be prescribed thereof and for the



said purpose, the procedural conditions contained in Order 45 Rule 1 must be taken into consideration. Section 80 of the Civil Procedure Code does not prescribe any limitation on the power of the court, but such limitations have been provided for in Order 45 Rule 1.

- j. The power of a civil court to review its judgment/decision is traceable in Section 80 CPC. The grounds on which review can be sought are enumerated in Order 45 Rule 1.
10. The Court of Appeal in Civil Appeal No. 2111 of 1996, *National Bank of Kenya Vs Ndungu Njau*, remarked on review applications as follows: -
- “...A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the matter nor can it be a ground for review that the court proceeds on an incorrect expansion of the law.”
11. In *Republic Vs Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] KEHC 6379 (KLR) the Court considered the import of some mistake or error apparent on the face of the record as captured in Order 45 of the Civil Procedure Rules. It rendered itself thus: -
- “... Review is impermissible without a glaring omission, evident mistake or similar ominous error. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by an order or review. The power of review is available only when there is an error apparent on the face of the record. I emphasize that review proceedings are not an appeal. The review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is not permissible.”
12. From the facts of this Application and the Supporting Affidavit, the Applicants contend that they are purchasers of portions of the estate and were in occupation at the time the grant was confirmed in 2007. However, no sale agreements have been annexed to the affidavit. No proof of payment has been exhibited. No mutation forms, no Land Control Board consents and no documentary evidence whatsoever has been placed before this Court to demonstrate the existence of the alleged transactions. Equally, there is no documentary proof that any Administrator disposed of his entire share. No transfer documents have been produced. No title documents reflecting subdivision have been exhibited.
13. The rule of evidence is clear that “He who alleges must prove”. The maxim has been grounded in law under Section 107 of the *Evidence Act*. The same was enunciated by late Justice Majanja in *Evans Otieno Nyakwana Vs Cleophas Bwana Ongaro* [2015] eKLR when he said that: “...As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of section 107 (1) of the *Evidence Act* (Chapter 80 of the Law of Kenya) which provides: - “107. (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist...”
14. Section 108 of the *Evidence Act* states that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. For avoidance of doubt, the provision



states as follows: - “The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.” In addition, section 109 of the same Act states: - “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

15. I take cognizance that an allegation, however strongly worded, does not amount to evidence. Order 45 requires discovery of new and important matter that could not, with due diligence, have been produced at the time of confirmation. The Applicants have not demonstrated that the alleged purchaser interests are newly discovered evidence. Indeed, they assert they were already in occupation at the time of confirmation. If that be so, the matter was within their knowledge as early as 2007.
16. The Applicants urge the Court to “review and open” the confirmed grant so as to insert their names. An error apparent on the face of the record must be self-evident and not one that requires elaborate argument to establish. It must be a clear clerical, mathematical or legal mistake evident from the record itself. The Certificate of Confirmation of Grant dated 4<sup>th</sup> December 2007 reflects the distribution as ordered by the Court. No clerical mistake has been identified. No misdescription has been pointed out. No inconsistency within the order has been demonstrated.
17. It is critical to underscore that the probate court’s primary mandate under sections 47, 71 and 82 of the *Law of Succession Act*, is to ascertain the assets that constitute the estate of the deceased, identify the lawful beneficiaries and distribute the estate in accordance with the law. This has been restated in a plethora of decisions including for instance, the case of re Estate of Alice Mumbua Mutua (Deceased) [2017] eKLR, in which the Court held that: -

“The *Law of Succession Act* and the Rules made thereunder, are designed in such a way that they confer jurisdiction to the probate court with respect to determining the assets of the deceased, the survivors of the deceased and the persons with beneficial interest, and finally distribution of the assets amongst the survivors and the persons beneficially interested. The function of the probate court in the circumstances would be to facilitate collection and preservation of the estate, identification of survivors and beneficiaries, and distribution of the assets.”
18. The probate court does not determine ownership disputes or enforce land sale agreements. That jurisdiction lies with the Environment and Land Court under Article 162(2)(b) of *the Constitution* of Kenya 2010. I take note that Purchasers and third parties who bought land from the deceased are not beneficiaries of the estate. Their interests are recognized in law as liabilities or obligations of the estate, falling under section 82(b)(ii) of the *Law of Succession Act*, which empowers administrators to complete contracts entered into by the deceased during his lifetime. That said, such purchasers cannot directly claim ownership or demand transmission of land through the succession cause before confirmation of grant. The legal position is settled that before confirmation of grant, administrators hold the estate in trust and cannot distribute or transmit assets and that after confirmation of grant, the administrators acquire authority to settle liabilities of the estate, including honouring valid sale agreements entered into by the deceased.
19. This position flows from section 71 of the *Law of Succession Act* as read together with Rule 40 of the Probate and Administration Rules which requires the court at confirmation of the Grant to be satisfied as to the assets and liabilities of the estate. Accordingly, purchasers and third parties can only assert their claims through the administrators and after the issuance of a Certificate of Confirmation of Grant, either by being recognized as creditors whose interests are noted during confirmation or enforcing their rights against the administrators in separate civil or land proceedings, where necessary.



20. The administrators once confirmed bear a statutory duty under sections 82 and 83 of the *Law of Succession Act* to settle the estate's liabilities, including completing valid land sale transactions. Until then, the probate court's focus remains on identifying the estate, safeguarding the free property and ensuring a lawful and orderly distribution of the properties of the estate of the deceased.
21. The Applicants further seek removal of Robert Kipkemei Keter as Administrator on the allegation that he sold his share. The mere allegation that an administrator disposed of his interest, unsupported by documentation is insufficient to warrant removal. Equally, the alleged death of one John Kimeli Sum has not been supported by a death certificate or any documentary proof. This Court cannot act on speculation.
22. Having considered the Application in its entirety, I am not persuaded that the Applicants have satisfied any of the grounds set out under Order 45 Rule 1 of the Civil Procedure Rules. There is no discovery of new and important evidence; no error apparent on the face of the record; no sufficient reason to warrant review and no statutory basis established for removal of an administrator. This Application is therefore devoid of merit.
23. Accordingly, the Notice of Motion dated 1<sup>st</sup> December 2025 is hereby dismissed. For the avoidance of doubt and in order to facilitate completion of Administration of this intestate estate of the deceased, I make the following orders: -
  - a. That the estate shall be distributed strictly in accordance with the Certificate of Confirmation of Grant dated 4<sup>th</sup> December 2007.
  - b. That a duly authorized Government Land Surveyor shall beacon and subdivide the estate property in accordance with the said Certificate of Confirmation of Grant.
  - c. That the Administrators shall, upon completion of survey, take all necessary steps to effect transmission and issuance of title documents to the beneficiaries as per the Confirmed Grant.
  - d. That if indeed there exists any claims by third parties alleging purchaser's interest in the estate properties, that shall not be determined in this succession cause. Such parties are at liberty to pursue their rights against the respective beneficiaries and/Administrators.
  - e. The Administrators shall complete administration of the estate within sixty (60) days from the date hereof and file a Probate Account.
  - f. That there shall be no orders as to the costs.
24. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 9<sup>TH</sup> DAY OF MARCH 2026**

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**R. NYAKUNDI**

**JUDGE**

