

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

PROBATE AND ADMINISTRATION APPEAL CASE NO. E010

OF 2022

IN THE MATTER OF THE ESTATE OF CHARLES MACHARIA

MURAGURI (DECEASED)

PURITY NJOKI MURIUKI.....
APPELLANT

VERSUS

EUNICE WANJIRU
MAINA.....RESPONDENT

RULING

1. Before this Court is the Summons dated **16th July 2025** by which the Applicant **PURITY NJOKI MURIUKI** seeks the following orders:-

“1. SPENT

2. SPENT

3. THAT the decision of this Honourable Court delivered on

the 25th day of April 2025 by Lady Justice Maureen A. Odero be reviewed and set aside or vacated.

4. THAT costs of this application be provided for.”

2. The application which was premised upon **Section 47 of the Law of Succession Act, Order 45 Rule 1, Rule 63 and 73 of the Probate and Administration Rules, Section 80 of the Civil Procedure Act** and all enabling provisions of Law was supported by the affidavit of even date sworn by the applicant.
3. The Respondent **EUNICE WANJIRU MAINA** opposed the application through her Replying Affidavit dated **4th August 2025**.
4. The matter was canvassed by way of written submissions. The Applicant filed the written submissions dated **25th August 2025** whilst the Respondent relied upon her written submissions dated **5th August 2025**.

BACKGROUND

5. This succession cause relates to the estate of the late **CHARLES MACHARIA MURAGURI** who passed away intestate on **30th November 2020**.
6. Following the demise of the Deceased his widow (the Respondent) **Eunice Wanjiru Maina** sought and on **5th July 2021** was issued with Grant of letters of Administration Intestate. The Respondent then filed a Summons for confirmation of Grant dated **25th August 2021**. The Applicant filed an Affidavit of Protest dated **8th September 2021** claiming that both she and her minor daughter were entitled to a share of the estate.
7. The Protest was heard and on **25th April 2025** this court delivered its judgment dismissing the protest. The Applicant then filed this present application seeking a review of the judgment delivered on **25th April 2025**. The application for review was strenuously opposed by the Respondent.

ANALYSIS AND DETERMINATION

8. I have carefully considered the application before me, the reply filed thereto as well as the written submissions filed by both parties.

9. **Section 80** of the **Civil Procedure Act, Cap 21 Laws of Kenya** allows any party who considers themselves aggrieved by a ruling or judgment to file an application for review of the same.

10. **Order 45 (1)** of the **Civil Procedure Rules 2010** provides 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 review of judgment to the court which passed the decree or made the order without unreasonable delay.

11. From the above provisions, it is clear that **Section 80** of the **Civil Procedure Act** grants to courts the power of Review while **Order 45** of the **Civil Procedures Rules 2010**, sets out the rules which govern applications for review as follows;-

“(a) The discovery of new and important matter or evidence which after the exercise of diligence, was not within the knowledge of the Applicant or could not be produced by him at the time when the Decree was passed or the Order made.

(b) Evidence of some mistake or error apparent on the face of the record.

(c) Any other sufficient reason and that the Application has to be made without unreasonable delay.”

12. The first issue for consideration is whether the application has been brought without unreasonable delay. In this case the judgment was delivered on **25th April 2025** and the application for review was filed on **16th July 2025** - a period of approximately **three (3) months** after delivery of the judgment. I find that the application was filed in a timely manner.
13. The Applicant has not made any claim that there existed an error on the face of the record, thus the court will not consider this ground.
14. The Applicant grounds her application on the discovery of new and important evidence to warrant a review of the judgment.
15. In the case of **Rose Kaiza v Angelo Mpanju Kaiza [2009] KECA 422 (KLR)**, the **Court of Appeal** held thus:-

“Applications on this ground must be treated with great caution and as required by r 4 (2) (b)

the Court must be satisfied that the materials placed before it in accordance with the formalities of the law do prove the existence of the facts alleged. Before a review is allowed on the ground of a discovery of new evidence, it must be established that the applicant had acted with due diligence and that the existence of the evidence was not within his knowledge; where review was sought for on the ground of discovery of new evidence but it was found that the petitioner had not acted with due diligence, it is not open to the court to admit evidence on the ground of sufficient cause. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made.” [Own emphasis]

16. Similarly, the **Court of Appeal** in **Tokesi Mambili and others v Simion Listanga (2004) eKLR** held:-

(i) In order to obtain a review an application has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.

(ii) Where the application is based on sufficient reason it is for the Court to exercise its discretion.”

17. The Applicant herein particularly took issue with and sought the review of **Paragraph 69** of the judgment dated **25th April 2026** in which the court stated as follows:-

“All in all I find there exists no evidence of the Deceased having ‘gifted’ Kabaru Block II/Mathira/470, Kabaru Block II/Mathira 986 or LR Number 7387/317 Nyeri to the Appellant during

his lifetime. As such I find and rule that the above properties form part of the estate of the Deceased and the same are available for distribution to the genuine beneficiaries.”

18. The Applicant particularly took issue with the finding of the Court that the parcel of land known as **LR 7387/317 Nyeri** (hereinafter '**the suit land**') belong to the Deceased and therefore formed part of the estate.
19. The applicant submitted that new and important evidence has emerged showing that the suit land in fact belonged to one '**Henry Gituanja**' as per the official search conducted on **1st July 2025**. That the said property was the subject of **Succession Cause No. 211 of 1998: Estate of Henry Gituanja Mwaniki** in which case the suit land was allocated to the beneficiaries of that estate.
20. The applicant asserts that the suit land is a sub-division of **LR 7387/18** and that the suit land has never been transferred to the Deceased. That there is no evidence to show that the suit land ever belonged to the Deceased in this matter therefore the court's decision that said property

formed part of the estate of this Deceased ought to be reviewed.

21. At the outset I note that whereas in her initial evidence before this court the Applicant alleged that the suit land had been '**gifted**' to her by the Deceased, she now changes tack and claims that the suit land did not belong to the Deceased at all but that it belongs to one **Henry Gituanja Mwaniki** - which is which? What does the Applicant want the court to believe? She has given two diametrically opposed positions regarding the ownership of the suit land.
22. Secondly if as the Applicant alleges this suit land belongs to the late **Henry Gituanja Mwaniki**, then why is the Applicant filing applications in respect of that property. The applicant has not demonstrated what interest and/or relationship she has in the estate of **Henry Gituanja**. If as she claims the suit land belongs to that estate then I would expect that the Administrators and/or beneficiaries of the estate would be pursuing the matter and not the applicant who being an outsider has no locus standi in the matter. The applicant has not presented before this court any document

authorising her to pursue the matter on behalf of the estate of the late **Henry Gituanja**.

23. Having said that the applicant claimed to have new and important evidence to present before this court such as would warrant a review of the judgment dated **25th April 2025**.

24. In the case of **Mohamed Abdi Mahamud v Ahmed Abdullahi Mohamed & 3 others (2018) eKLR** the **Supreme Court of Kenya** which set out the governing principals of allowing additional evidence as follows:-

“We therefore lay down the governing principles on allowing additional evidence in appellate courts in Kenya as follows:

(a) The additional evidence must be directly relevant to

the matter before the court and be in the interest of justice;

(b) It must be such that, if given, it would influence or

**impact upon the result of the verdict,
although it need not be decisive;**

**(c) It is shown that it could not have been
obtained**

**with reasonable diligence for use at the trial,
was not within the knowledge of, or could
not have been produced at the time of the
suit or petition by the party seeking to
adduce the additional evidence;**

**(d) Where the additional evidence sought to be
adduced removes any vagueness or doubt
over the case and has a direct bearing on the
main issue in the suit; (**

**(e) The evidence must be credible in the sense
that it is
capable of belief;**

(f)

**(g) Whether a party would reasonably have
been aware**

of and procured the further evidence in the course

of trial is an essential consideration to ensure fairness and due process;

(h)

(i)

(j)

(k) The court will consider the proportionality and

prejudice of allowing the additional evidence. This requires the court to assess the balance between the significance of the additional evidence, on the one hand, and the need for the swift conduct of litigation together with any prejudice that might arise from the additional evidence on the other.”

[Own emphasis]

25. The applicant has presented before the court an official search dated **1st July 2025** (Annexure **PMM ‘1’** to the Supporting Affidavit dated **16th July 2025**). It is pertinent to

note that this search was conducted in **July 2025** which was four (4) months **after** this court had delivered its judgment. Why did the applicant not undertake the search sooner.

26. The Respondent in his Replying Affidavit averred that the title document for the suit land has always been in the possession of the applicant - this is not denied. Given that at the time of the hearing the applicant had in her possession the title document then she had all opportunity to conduct a search and carry out any investigations she wished **before** the hearing. Moving to conduct these investigations only after delivery of the court's judgment is clearly an afterthought.
27. Finally the succession cause cited by the Applicant in the Estate of **Henry Gituanja** was filed in the year **1998**. Clearly that file was in existence at the time this court was hearing the matter. Why did the Applicant fail to raise the issue during the hearing - this is certainly not '**new evidence**' as the succession cause has been in existence since **1998**.

28. On the whole I find that this alleged new and important evidence is evidence which the applicant exercising due diligence would have been able to avail to court during the trial. It is clear that the applicant has merely embarked on a fishing expedition after delivery of the judgment in an attempt to dig out information which in any event was easily available during the trial. Moreover the applicant does not appear to be sure whether the suit land belonged to the Deceased in this cause or to the late **Henry Gituanja**.
29. In conclusion I find no merit in this application for review. The same is dismissed in its entirety. Any person claiming ownership of the suit property is at liberty to file suit in the **Environment and Land Court**. Costs of this application shall be met by the Applicant.

Dated in Nyeri this 27th day of February 2026.

.....
MAUREEN A. ODERO

JUDGE

ORIGINAL