

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE NO. 196 OF 2005

IN THE MATTER OF THE ESTATE OF WAHOME MWENJE
NGONORO (DECEASED)

PETER KAMAU WANGUNU

APPLICANT

VERSUS

JOHN MWENJE WAHOME 1ST

RESPONDENT

BEATRICE NYOKABI GATHURI 2ND

RESPONDENT

JOSEPH MAINA WAHOME 2ND

RESPONDENT

RULING

1. The matter came up for hearing of two applications. The first one is dated 18.07.2025. The applicant sought the following order:

(1) THAT the Certificate of Confirmation of Grant issued in respect of the estate of Wahome Mwenje Ngonoru (Deceased) on the 24th of October, 2016 be reviewed as provided for by Rule 43 of the Probate and Administration Rules in the following

respect: That Title No. Aguthi/Gititu/323 be re-distributed into two equal portions to be shared as follows: a) One portion to be held by Beatrice Nyokabi Gathuri to hold in trust for herself and the children/family of Wangui Wahome - deceased. (b) One portion to be held by John Mwenje Wahome to hold in trust for himself and the children/family of Nyakariga Wahome - deceased.

(2) THAT the cost of this application be provided for.

2. The application was strenuously opposed by the Respondent. She maintains that after confirmation, the death of an heir triggers succession in his or her own estate and not to redistribute.
3. It is noted that the court had divided the sole property of the deceased, land parcel number Aguthi/Gatitu/323, into 3 shares. The widow Priscicah Muthoni Wahome is now deceased. There is an order seeking review of the judgment to remove the house of Priscicah Muthoni Wahome and leave two houses.
4. However, this is a property that had crystallized in her favour before death. There may or may not be interests she created before her death. The grant was confirmed on 24.10.2016, 10 years ago, and the said Priscah Muthoni Wahome died on 18.6.2019. The affidavit of John Mwenje Wahome depones that Priscicah had one adopted son. That assertion may or may

not be correct. However, on 7.11.2024, I declined to order the removal of her name from the proceedings, and that position remains unchanged. Accordingly, land parcel number Aguthi/Gatitu/323 shall be subdivided into three (3) equal portions, in line with the earlier orders of this Court on 24.10.2016.

5. If the Applicants were aggrieved by my earlier order, they ought to have appealed. The land for Prisciah to be registered in her estate. The Ruling of Mativo J on 24.10.2016 remains in force. John Mwenje Wahome had filed a Notice of Appeal on 26.10.2016 from the decision but there has been no appeal.

6. The question of Prisciah was conclusively dealt with in the decision, wherein it was stated that there existed an adopted son or a dependant as far back as 24.11.2015. The jurisdiction to review is set out in Section 80 of the Civil Procedure Act states that:

“Any person who considers himself aggrieved—

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

(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or

made the order, and the court may make such order thereon as it thinks fit”.

Section 63 (e) of the Civil Procedure Act states that:

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed make such other interlocutory orders as may appear to the court to be just and convenient.

7. This is buttressed by Order 45 of the Civil Procedure Rules which states as follows:

“(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”

8. The question of review was discussed at length by Kuloba J (as he then was) in **Lakesteel Supplies vs. Dr. Badia and Anor, Kisumu HCCC No. 191 of 1994** where he opined that:

“The exercise of review entails a judicial re-examination, that is to say, a reconsideration, and a second view or examination, and a consideration for purposes of correction of a decree or order on a former occasion. And one procures such examination and correction, alteration or reversal of a former position for any of the reasons set out above. The court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in Order 44 rule 1, of the Civil Procedure Rules. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. It can only lie if one of the grounds is shown, one cannot elaborately go into evidence again and then reverse the decree or order as that would be acting without jurisdiction, and to be sitting in appeal. The object is not to enable a judge to rewrite a second judgement or ruling because the

first one is wrong...On an application for review, the court is to see whether any evident error or omission needs correction or is otherwise a requisite for ends of justice. The power, which inheres in every court of plenary jurisdiction, is exercised to prevent miscarriage of justice or to correct grave and palpable errors. It is a discretionary power. In the present application, it has not been said or even suggested that after the passing of the order sought to be reviewed, there is a discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the ruling was made."

9. Order 45 of the Civil Procedure Rules is applicable to succession by dint of rule 63(1) of the Probate and Administration Rules that provides 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.

10. The applicant has not met a threshold for review. There can only be one review in a matter. This was rejected way back on

7.11.2024. There is nothing to review. In the circumstances, the issue having already been determined, the present application does not meet the threshold for review.

11. Accordingly, the application dated 18.7.2025 is hereby dismissed with costs of Ksh. 15,000/= payable to the Respondent.

12. The second application is an amended summons general dated 19.05.2025. It seeks the following orders:

a) That this court be pleased to order the Deputy Registrar to execute the requisite Land Registration Act (LRA) forms, Land Control Board applications, mutations and any other necessary documents, to effect the transmission of the share of PRISCICAH MUTHONI WAHOME (Deceased), pursuant to the order of this court on 7th of November 2024 and the said share to be indicated as the estate of PRISCICAH MUTHONI WAHOME (Deceased) and that the production of the requisite passport size photos, copies of national identity card, copies of the personal identification number required in the transmission be dispensed with.

b) That the 3rd Respondent be ordered to sign the requisite Land Registration Act (LRA) forms and all the requisite Land Control Board applications, mutations and any other necessary documents and to avail his passport size photos, copies of his ID card and the personal

identification number (PIN) to effect the transmission of the said property.

c) That in the alternative the court may be pleased to order the Deputy Registrar to execute the above stated documents on behalf of the 3rd Respondent and to order the Land Registrar to dispense with the production of the said passport size photos, copies of his ID cards and the personal identification numbers (PIN) to effect the transmissions of the said property.

d) That the cost of this application may be in the cause.

13. Some parties, particularly John Mwenje Wahome, do not wish to sign because they are eyeing the parcel bequeathed to Priscicah Muthoni Wahome. There is no reason why they should not sign in favour of a crystallized right. Holding the estate at ransom is anathema to good order and expeditious disposal of cases.

14. Secondly the deceased cannot sign. There is, therefore, a need to transmit her share to her estate. The application is allowed. The Deputy Registrar will sign transmission documents on behalf of John Mwenje Wahome, if he fails to sign within 30 days from today, and on behalf of the estate of the late Priscicah Muthoni Wahome to transmit the share to the estate of the late Priscicah Muthoni Wahome (deceased).

15. Transmission be completed by 25.8.2026. The matter be mentioned on 22.10.2026 to confirm transmission and discharge the administrator.

Determination

16. The court makes the following orders:

- a) The Deputy Registrar will sign transmission documents on behalf of John Mwenje Wahome, if he fails to sign within 30 days from today, and on behalf of the estate of the late Priscicah Muthoni Wahome to transmit the share to the estate of the late Priscicah Muthoni Wahome (deceased).
- b) The application dated 18.7.2025 is hereby dismissed with costs of Ksh. 15,000/= payable to the Respondent.
- c) File is closed.

DELIVERED, DATED and SIGNED at NYERI on this 25th day of February, 2026. Ruling delivered physically in open court.

KIZITO MAGARE
JUDGE

In the presence of: -

Ms. Muchomba for Mr. Kimani for the Applicant

Ms. Mwaniki for the 2nd Respondent, John Mwenje

No appearance for C.M. Kingori for the 1st Respondent, Peter Kamau

Applicant present

Beneficiaries present

Court clerk - Michael

ORIGINAL