



REPUBLIC OF KENYA



**Njogu & 3 others v Njogu & 7 others (Succession Cause 18 of 1992)
[2026] KEHC 3389 (KLR) (Family) (13 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3389 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 18 OF 1992
PM NYAUNDI, J
MARCH 13, 2026
IN THE MATTER OF THE ESTATE OF NJOGU KIIGI (DECEASED)**

BETWEEN

**WAIRIMU NJOGU 1ST APPLICANT
EUNICE WANJIKU NJOROGE 2ND APPLICANT
JEDIDAH NGINA KIBUNA 3RD APPLICANT**

AND

ALEX NJOGU INTERESTED PARTY

AND

**RUTH WAGITU NJOGU 1ST RESPONDENT
EVANS NDUNGU KIIGI 2ND RESPONDENT
NELSON KAMAU NJOGU 3RD RESPONDENT
GODFREY KIARA NJOGU 4TH RESPONDENT
SAMUEL NJIIRI NJOGU 5TH RESPONDENT
ANNE WANGUI NJOGU 6TH RESPONDENT
EDITH WAMBUI NJOGU 7TH RESPONDENT
MARTHA NJERI NDUNGU 8TH RESPONDENT**



RULING

1. The applicants submit their application dated 18th July 2025 under Sections 1A, 1B, 3A and 80 of the *Civil Procedure Act*, Order 45 rule 1 of the *Civil Procedure Rules*, and Article 159(2) of the *Constitution of Kenya*, and seek the following orders.
 1. That this Honourable Court be pleased to review, vary or set aside the orders issued on 19th January 2024 in respect of:
 - i. The removal of the 8th Respondent / Applicant, Martha Njeri Ndungu, from the application dated 20th September 2022
 - ii. The Exclusion of property Ref No. Kiambu/ Municipality Block 5 (Kiamumbu) 1217; and
 - iii. The award of costs assessed at Kshs 25000 payable within 30 days from the date of the orders
 2. This Honourable Court grant such further or other relief as it deems just
 3. That the costs of the application be in the cause.
2. The application is supported by the affidavit of Jedida Ngina Kibuna, sworn on 18th July 2025. It is the applicant's assertion that the Court erred in permitting the application dated 21st June 2023. The Court erred in concluding it had no jurisdiction. The issue for determination was whether there was intermeddling with the estate, and the Court should have exercised its statutory mandate to revert the parcel of land, Property Ref. No. Kiambu/Municipality Block 5 (Kiamumbi) 1217, to the estate.
3. Martha Njeri Ndungu, the 8th Respondent, opposes the application and has sworn an affidavit dated 23rd October 2025. She urges for the dismissal of the application and reiterates that she is the rightful owner of the said parcel of land and it was never part of the deceased's estate.
4. The 2nd Respondent, Co-Administrator Evans Ndungu Kiigi, has also sworn an affidavit in opposition dated 28th October. Like the 8th Respondent, he states that the application is, in fact, an appeal and that the applicant has not provided a sufficient basis for this Court to review the impugned ruling.
5. The Application was canvassed via written submissions. The applicant's submissions are dated 23rd December 2025. She frames the issues for determination as-
 1. Whether the Honourable Court committed an error apparent on the face of the record by declining jurisdiction over succession issues (fraud/intermeddling) and unlawfully excluding property Ref No. Kiambu/Municipality Block 5 (Kiamumbi) 1217.
 2. Whether the orders of January 19, 2024, were procured by deliberate perjury and concealment of material facts by the 2nd and 8th Respondents, providing sufficient reasons for review.
 3. Whether the application for review is merited, notwithstanding the procedural technicalities raised by the 2nd Respondent.
6. It is submitted that in the impugned ruling, the Court misapprehended the issue for determination, classifying it as a 'mere title dispute' whereas it sought to protect the estate from intermeddling and succession fraud. Moreover, the Court ought to have exercised its mandate as provided under Rule 41



(3) of the Probate and Administration Rules, with reference to the decision in re Estate of Julius Ndubi Javan (Deceased) [2018] KEHC 8523 (KLR). Further, the Court's misapprehension of the law renders the decision reviewable.

7. The applicant also contends that the statements made by the 2nd respondent regarding Share Certificate No. 217 were false and constitute perjury. Similarly, the 8th respondent claims she acquired the property through transfer, which is untrue, and therefore she has also committed perjury.
8. She explains the delay and states it was caused by her new advocates' thorough review of the Court's proceedings. She asserts that the presence of fraud and corruption within the judicial process provides sufficient grounds for review.
9. She contests the award of costs to the 8th Respondent as this endorses fraud and is 'an egregious miscarriage of justice'.

Analysis and Determination

10. Having reviewed the pleadings herein, alongside the submissions and the relevant law, I frame the issues for determination as follows-
 1. Whether the application for review is merited?
 2. Who should pay costs?
11. In allowing the application dated 12th June 2023, I found that this Court was not the appropriate forum to resolve the dispute by the applicant herein, regarding the 8th Respondent's title to Land Parcel Kiambu/Municipality Block 5 (Kiamumbi) 1217. I explained why the probate Court lacked jurisdiction to determine the validity of her title. The applicant does not agree with my analysis of the law and seeks to review that decision.
12. The applicant also seeks that I review the order I made condemning her to pay costs
13. The Court's powers of Review are set out in Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules 2010.

Section 80 provides as follows: -

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.

Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides 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 of 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 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 judgement to the court which passed the decree or made the order without unreasonable delay.

14. In *Kabansora Millers Ltd v Nyangena* [2025] KEHC 4754 (KLR), the Court reiterated that the permissible grounds for review are narrowly circumscribed and include:

- a) The discovery of new and important evidence which, despite the exercise of due diligence, was not within the applicant's knowledge or could not be produced at the time the order was made
- b) A mistake or error apparent on the face of the record or
- c) Any other sufficient reason.

15. The applicant herein seeks review on the basis that the court erred in its interpretation of the applicable law and specifically in the finding that it did not have jurisdiction. The law is well-articulated and long-settled as to when a court will exercise review jurisdiction. In *National Bank of Kenya Limited v Ndungu Njau* (Civil Appeal No. 211 of 1996) [1997] eKLR, the Court of Appeal stated that

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.

16. In *Kariuki & 26248 others v Attorney General & 4 others* [2025] KEHC 3491 (KLR), the Court noted that-

If the petitioners believe that the court was incorrect in its ruling, that can only amount to an error of law or an incorrect conclusion of law or fact, which can only be challenged through an appeal.

17. The applicant has detailed the grounds upon which they challenge the ruling. Her position is that I misinterpreted the law. She might be correct. However, I cannot sit on an appeal of my own decision.

18. The applicant also seeks that I review the order on costs. The award of costs is governed by the principle that costs follow the event, as provided in Section 27 of the *Civil Procedure Act*:

Section 27: Costs

- (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incidental to all suits shall be in the discretion of the court or judge, and the court or judge shall have full power to determine by whom and out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid; and the fact that the court or judge has no jurisdiction to try the suit shall be no bar to the exercise of those powers:

Provided that the costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall, for good reason, otherwise order. (Emphasis added)

19. In awarding costs, the Court exercises its discretion. The law stipulates that the successful party should be awarded costs; when the Court departs from this principle, it must provide reasons. In my case, I saw no reason to deviate from the rule that costs follow the event.

20. Finally, Order 45 of the *Civil Procedure Rules*, cited above, requires that the application be submitted without undue delay. The impugned ruling was delivered on 19th January 2024, and the application



was filed on 18th July 2025. The respondents have protested the delay in submitting this application. The reason given for the delay is that the applicant's advocate was diligently searching for grounds upon which to challenge the ruling. Whilst the advocate's diligence is admirable, the law requires that the application be presented 'without unreasonable delay'.

21. Litigants are subject to the court's timetable, not their own, ensuring justice is administered swiftly. Failing to act diligently results in doors to justice closing, much like Noah's Ark. In this case I find that the applicant's 18-month delay is unjustified.
22. For the foregoing reasons, the application is dismissed in its entirety, with costs to the respondents.
23. The Summons for revocation dated 20th September 2022 will proceed to hearing, and will be mentioned before the Hon. Deputy Registrar on 28th April 2026, to confirm that the parties have complied with the pre-trial directions and take directions on its hearing.
24. Parties are at liberty to appeal; the party exercising their right of appeal shall do so within 30 days from the date hereof.

It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY AT NAIROBI THIS 13TH DAY OF MARCH 2026.

M NYAUNDI

JUDGE

In the presence of:

Ng'alamoi Court Assistant

Ms. Watetu for Mrs. Ndung'u for 2, 3, 4, 5 Respondents

Ms. Moraa holding brief Ngeresa for 5th Respondent

Ms. Abalo for Applicants

