

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
SUCCESSION CAUSE NO E111 OF 2024

**IN THE MATTER OF THE ESTATE OF THE LATE CHELUGET DAVID
KIPTOO**

(DECEASED)

HELLEN CHEPKOECH CHELUGET.....1ST

PETITIONER

GEOFFREY KIPKEMBOI RONO.....2ND

PETITIONER

JOHN KIBIY KOSKEI.....3RD PETITIONER

VERSUS

DRUSILLA JEPKOECH LEL & 14 OTHERS.....

BENEFICIARIES

AND

EVERLYNE CHELUGET.....1ST

DEPENDANT

FAITH CHEBET.....2ND DEFENDANT

EMMANUEL KIRWA CHELUGET.....3RD

DEFENDANT

KIPCHIRCHIR LEL.....4TH

DEFENDANT

Coram: Before Justice R Nyakundi

M/s Kalya & Co Advocates

M/s Triple Ok Law LLP

RULING

1. What is pending before this Honourable Court for determination are 2 applications. The first application is Summons dated 19th March 2026

premised under Section 47 of the Law of Succession Act, Article 25 (c), 48, 50, 159 and 232 of the Constitution of Kenya, Rules 63 and 73 of the Probate and Administration Rules, Section 80 of the Civil Procedure Act and Order 456 Rule 1 of the Civil Procedure Rules where the Applicants are seeking the following orders: -

- a. *This application be certified as urgent and be heard ex parte on a priority basis.*
 - b. *Pending the inter partes hearing and determination of this application, there be an interim stay of execution and implementation of Orders (c), (d), (e), (f), and (g) of the Ruling delivered on 13th March 2026.*
 - c. *The Honourable Court be pleased to review its Ruling delivered on 13th March 2026 and any subsequent orders, specifically Orders (c), (d), (e), (f), and (g) thereof, which directed the surrender, transmission and forensic examination of the original Will dated 1st July 2022 by the Directorate of Criminal Investigations, and upon such review, set aside and/or vary the said orders in their entirety accordingly.*
 - d. *Costs of the application be provided for.*
- 2.** The Application is made on the following grounds on the face of it among others: -
- a. There is an error apparent on the face of the record in the ruling delivered on 13th March 2026, in that the court issued mandatory orders for the DCI to conduct forensic investigations while acknowledging the existence of Constitutional Petition No. E006 of 2025 which challenges the mandate and legality of the DCI's involvement in this specific matter.
 - b. The Court issued Orders (c) to (g) *suo motu* despite no party requesting forensic examination as a relief in their respective pleadings.

- c. There exists a patent contradiction where the Court expressly found that the evidence did not meet the threshold for forensic examination (Paragraph 32), yet proceeded to order the same.
- d. The directives requiring the DCI to examine the Will directly conflict with subsisting conservatory orders issued in Constitutional Petition No. E006 of 2025, which restrain the DCI from investigating matters related to the attestation of the said Will.
- e. The orders for forensic examination Orders (c)-(g) are fundamentally incompatible with the comprehensive stay of proceedings granted under Order (a); the two cannot legally or logically operate concurrently.
- f. Since the validity of the Deceased's interest in the primary estate asset (LR No. Uasin Gishu/Kormaet Scheme/57) is currently pending before the Environment and Land Court (ELC Case No. 115B of 2020), forensic examination of the Will is premature and potentially academic.
- g. Review is necessary to restore legal coherence and ensure this Court does not issue directions that compel a state organ the DCI to violate existing orders from a court of concurrent jurisdiction.
- h. The implementation of the forensic orders would render the pending Constitutional petition nugatory and violate the Petitioners right to a fair hearing and due process.
- i. The applicants have acted in good faith and with due diligence and have filed this application without any unreasonable delay or at all.
- j. This court has powers to grant the orders sought in the best interest of justice and fairness.
- k. It is fair, just, expedient and in the interest of justice that this application be allowed and the orders made on 13th March 2026 be reviewed.

3. The Application is supported by the annexed affidavit of Hellen Chepkoech Cheluget who deponed as follows: -
- a. *That I am the 1st Petitioner/Applicant herein, the duly appointed Executrix of the Estate of the late David Kiptoo Cheluget (Deceased) and I am duly competent and authorised to swear this Affidavit on my own behalf and on behalf of the 2nd and 3rd Petitioners/Applicants.*
 - b. *That I am well versed with the facts of this case as they appear in our records and I am enabled to swear this supporting affidavit out of information within my knowledge as well as information derived from the records within our custody and our advocate's custody.*
 - c. *That I have read, explained to by our advocates on record and understood the Ruling delivered by this Honourable Court on 13th March 2026 and now wish to say the following concerning Orders (c), (d), (e), (f), and (g) of the said Ruling, which directed the surrender, transmission, and forensic examination of the original Will dated 1st July 2022.*
 - d. *That I am informed by my Advocates on record, which information I verily believe to be true, that the Honourable Court, having issued a comprehensive stay of proceedings under Order (a) of the Ruling and having simultaneously stayed all transmission rights under the Certificate of Confirmation of Grant under Order (b), thereafter proceeded under Orders (c) to (g) to direct the surrender and forensic examination of the original Will dated 1st July 2022 at the Directorate of Criminal Investigations (DCI), with strict timelines of 7 and 10 days respectively.*
 - e. *That I am informed by my Advocates on record, which information I verily believe to be true, that the coexistence of a stay of proceedings together with positive, time-bound and consequential directives affecting the core subject matter of those very proceedings constitutes a patent inconsistency and error on the face of the record, as the two*

sets of orders cannot operate concurrently without defeating the very essence and purpose of the stay.

- f. That I am further informed by my Advocates on record, which information I verily believe to be true, that no party to these proceedings, whether the Petitioners or the Objectors, at any stage prayed for or sought any order for forensic examination of the Will as a relief in any of the applications before the Court.*
- g. That I am further informed by my Advocates on record, which information I verily believe to be true that the prayers in the application dated 27th November 2025 were strictly confined to the issue of stay of proceedings herein pending the determination of ELC Case No. 115B of 2020, and did not extend to any inquiry into the authenticity of the Will.*
- h. That I am advised by our advocates on record which information I verily believe to be true that the grant of a relief not sought by any party is discernible from the record and constitutes an error apparent on the face thereof, warranting review by this Honorable Court.*
- i. That I am informed by my Advocates on record, which information I verily believe to be true that significantly and as is evident from the record, the Objectors/Respondents in their Replying Affidavit dated 15th January 2026 filed in opposition to the said application for stay confined their response to jurisdictional and procedural issues relating to the stay.*
- j. That I am further informed that the Objectors/Respondents did not, in the said affidavit, raise, canvass, or place reliance upon any allegation of forgery or challenge to the authenticity of the Will.*
- k. That I am advised that, in the circumstances, the issue of forgery was neither actively placed before the Court for determination nor formed part of the contested issues in the application that culminated in the Ruling herein, a fact apparent on the face of the record.*

- l. That I am aware that the High Court of Kenya at Eldoret, in Constitutional and Human Rights Petition No. E006 of 2025, issued an order dated 31st October 2025, wherein the Honourable Mr. Justice Wananda J.R. Anuro granted conservatory orders restraining the Respondents therein, including the Directorate of Criminal Investigations, from investigating or prosecuting any matters relating to the drawing, attestation, and certification of the Will dated 1st July 2022, which is the very Will that is the subject of the forensic examination directed in the Ruling herein.*
- m. That I am informed by my Advocates on record, which information I verily believe to be true, that the said Constitutional Petition and the conservatory orders issued therein remain subsisting and binding and have not been discharged, varied, or set aside.*
- n. That I am further advised that the direction requiring the transmission of the original Will to the DCI for forensic examination is, on the face of the record, directly inconsistent with and in conflict with the subsisting conservatory orders of a court of concurrent jurisdiction, in that it directs an organ of the state, the DCI, to handle and examine the very document in respect of which that same organ has been restrained from conducting any investigation.*
- o. That I am informed by my Advocates on record, which information I verily believe to be true, this conflict is manifest and apparent on the face of the record and constitutes a clear error on the face of the record justifying review.*
- p. That I am informed by my Advocates on record, which information I verily believe to be true, that the effect of Orders (c) to (g) of the Ruling, if implemented, would be to place this Honourable Court's directions in direct conflict with those of a court of concurrent jurisdiction, a situation not countenanced in law and which constitutes a further error apparent on the face of the record.*

- q. That I am informed by my Advocates on record, which information I verily believe to be true, that the Honorable Court, at paragraph 32 of the Ruling, expressly acknowledged that the evidence presented by the Objectors “may not strictly meet the threshold ordinarily required to justify a forensic examination,” yet nonetheless proceeded to order such examination on the basis of a generalized concern regarding the value of the estate and the need to avert future disputes; that this internal inconsistency between the Court’s express finding and the resultant order constitutes a clear error apparent on the face of the record.
- r. That I am further informed by my Advocates on record, which information I verily believe to be true, that the pending determination of ELC Case No. 115B of 2020 is foundational to these proceedings, as expressly recognised in the Ruling.
- s. That I am further informed by my Advocates on record, which information I verily believe to be true that the question whether LR No. Uasin Gishu/Kormaet Scheme/57 constitutes the free property of the Deceased is an issue pending before the Environment and Land Court.
- t. That I am further informed by my Advocates on record, which information I verily believe to be true that, should the Environment and Land Court determine, as is sought by the Respondents, that the said property is not part of the free estate of the Deceased, the principal asset disposed of by the Will would fall outside the free estate, thereby rendering any determination on the Will’s validity or authenticity purely academic and of no practical utility.
- u. That I am further informed by my Advocates on record, which information I verily believe to be true that, in those circumstances, the direction for forensic examination of the Will, whose relevance is contingent upon the outcome of the ELC proceedings, presents an apparent inconsistency on the face of the record when read together

with the stay granted, in that such orders may take effect notwithstanding the very basis upon which the proceedings were stayed.

- v. That I am informed by my Advocates on record, which information I verily believe to be true, that the review sought herein will not occasion any prejudice to the Objectors/Respondents, as the stay granted under Order (a) remains intact and continues to safeguard their interests pending the determination of the ELC matter.*
- w. that I am informed by my Advocates on record, which information I verily believe to be true, that all the errors apparent on the face of the record identified above, including internal inconsistencies and jurisdictional conflicts, ought, in the interests of justice, to be corrected by way of review as prayed in the application filed herewith, so as to ensure that the final orders do not disturb the substantive stay or the broader framework of the Ruling.*
- x. That it is in the interests of justice that this application be allowed so as to restore coherence, consistency, and legality in the Court's orders, and to ensure that they do not stand in conflict with those of a court of concurrent jurisdiction.*

Notice of Motion Application dated 19th March 2026

- 4.** The second application is a Notice of Motion Application dated 19th March 2026 premised under Section 47 of the Law of Succession Act; Rule 63 & 73 of the Probate and Administration Rules, 1980 and Order 45 of the Civil Procedure Rules, 2010 where the Applicants are seeking the following orders;
 - a. This Application be certified urgent and the service thereof be dispensed with in the first instance for purposes of Prayer Numbers 2 and 3 herein.*

- b. The Honourable Court be pleased to stay its Orders of 13th March, 2026 pending the hearing and determination of this Application inter partes.*
- c. Upon hearing of this Application inter-partes, the Honourable Court be pleased to review and vary its Orders of 13th March, 2026 requiring the Petitioners and the Objectors to avail to the County Criminal Investigation Officer at least three (3) original documents bearing the known signatures of the deceased executed between 2018 and 2022 for forensic analysis and in substitute thereof, to direct that the Petitioners and the Objectors in any case, avail to the County Criminal Investigation Officer any additional original documents bearing the known signatures of the deceased executed at any time prior to 2018, for forensic analysis.*
- d. Cost of the Application be borne by the Estate of the Deceased.*

5. The Application is made on the following grounds on the face of it among others: -

- a. The Honourable Court vide its ruling delivered on 13th March, 2026 among other things, directed that the Petitioners and the Objectors avail to the County Criminal Investigation Officer at least three original documents bearing the known signatures of the deceased executed between 2018 and 2022 for forensic analysis.
- b. However, it will be difficult for the Objectors to comply with this direction of the Court, as their main contention is that the deceased did not have any known signatures post 2018, as the deceased was at that time incapable of appending any signatures.
- c. It is, therefore, desirous that the Court amends its orders to allow for the Objectors to avail to the County Criminal Investigation Officer sample signatures of the deceased that pre-date 2018 for forensic analysis.

- d. The Objectors will be greatly prejudiced if the orders of Court are not reviewed and/or varied to expand the timelines for date of the signatures to be submitted to the County Criminal Investigation Officer for forensic analysis.
 - e. It is in the interest of justice and fairness that the Orders of the Court be reviewed and varied. VI. In any case, the Objectors are ready and willing to adhere to the other directions of the Court and only seek review and variation of the orders to the extent that the timeline of the date of the signatures is limited to 2018 to 2022.
6. The Application is supported by the annexed supporting affidavit to the Notice of Motion Application sworn by Abraham Kirwa Cheluget who deponed as follows as follows: -
- a) *I am an Objector herein and beneficiary of the Estate of David Kiptoo Cheluget Deceased being a son of the Deceased.*
 - b) *I am therefore conversant with the matters herein and hence competent to make this affidavit in support of the application filed herewith the Application on my own behalf and have authority to swear the same on behalf of DRUSILLA CHEPKOECH LEL, DAMARIS CHEROTICH ROTICH, LYN CHEROP MENGICH, JOHN CHELUGET, DR. JESANG METTO, MIKE KIPKORIR CHELUGET, JOB KIPKEMEI TOO CHELUGET and REBECCA CHELUGET, all applicants herein and beneficiaries of the Estate of David Kiptoo Cheluget (Deceased) together referred to as the Applicants being children of the Deceased (hereinafter the "Deceased").*
 - c) *I am aware that this Honourable Court vide its ruling delivered on 13th March 2026 among other things, directed that the Petitioners and the Objectors avail to the County Criminal Investigation Officer at least three original documents bearing the known signatures of the deceased executed between 2018 and 2022 for forensic analysis.*

- d) *I am further aware that the Applicants contention in their Summons for Revocation of Grant, pending determination by the Court, is that at the time of death on 15th June 2024, and potentially for some time as back as 2018, the Deceased had for a long time resorted to signing documents by affixing his thumb print as he could no longer append a physical signature.*
- e) *Consequently, the Applicants contend that they have no known original documents containing the Deceased signatures between the period 2018 to 2022.*
- f) *Therefore, I am aware that the Applicants are unable to comply with the Court's directions as framed as far as submission of original documents bearing the Deceased signature from the period between 2018 to 2022.*
- g) *However, I am aware that the Applicants are in possession of original documents bearing the Deceased signature but these documents pre-date the period of 2018.*
- h) *I verily believe therefore, that the Applicants should be allowed to avail to the County Criminal Investigation Officer, original documents pre-dating 2018 bearing the Deceased signature for forensic analysis.*
- i) *I therefore verily believe that it is in the interest of justice and fairness that the Honourable Court reviews and varies its orders of 13th March, 2026 to allow the Petitioners and the Objectors to avail any original documents pre-dating 2018 bearing the Deceased signature.*
- j) *The Applicants will suffer great prejudice if the court does not allow them to avail to the County Criminal Investigation Officer, original documents pre-dating 2018 and bearing the Deceased signature for forensic analysis, as these are the only documents in the Applicants' possession.*

k) Based on the circumstances described hereinabove, it is in the interest of justice and fairness that the court also stays the application of its initial orders dated 13th March 2026 pending hearing of the present application.

Analysis and Determination

7. This Court in its Ruling dated 13th March 2026 which relate to this intestate succession cause held as follows: -

36. *In view of the foregoing and exercising the court's inherent powers under Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules to ensure the ends of justice, I make the following orders;*

- a.** *That the ruling on the Summons for Revocation of Grant is hereby arrested and stayed until the proprietary rights over LR NO. UASIN GISHU/KORMAET SCHEME/57 are settled by the ELC*
- b.** *That an order be and is hereby issued that there shall be an interim stay of all transmission rights that had crystallized pursuant to the Certificate of Confirmation of Grant dated 7th February 20225 issued in this Succession cause.*
- c.** *That to address the issues of forgery, the Original WILL dated 1st July 2022 which was relied upon in issuing the Grant of Probate and the Certificate of Confirmation of Grant shall be surrendered to the Deputy Registrar of this court within 7 days of this ruling for onward transmission to the Forensic Document Examiner at the Directorate of Criminal Investigations Headquarters along Kiambu road through the County Criminal Investigation Officer, Uasin Gishu within 10 days of this ruling.*
- d.** *That the Petitioners and the Objectors shall, within 7 days of this ruling, avail to the County Criminal Investigation Officer at least*

three original documents bearing the known signatures of the deceased executed between 2018 and 2022 for forensic analysis.

- e. That the Forensic Document Examiner shall file a comprehensive report with this court within 30 days from the date of receiving both the propounded WILL and samples of specimen signatures to be compared with the question of signatures in the impugned WILL.*
- f. That the costs of the forensic document examination shall be borne by the estate.*
- g. That a status conference shall be held on 5th May 2026 for further directions based on the examiner's report.*
- h. It is so ordered.*

8. A clear look at the record indicates that the firm of Kalya & Co. Advocates had initiated a **Constitutional Petition No E006 of 2025 Wilson Kiplagat Kalya & Karen Jerop Chesoo and 1 Other Vs State Law Office & ODPP and 2 Others** in this High Court in Eldoret where the session Judge therein Wananda J issued conservatory orders as follows on 31st day of October 2025;

- a. That pending the hearing and determination of the Petition herein. A conservatory order is hereby issued, prohibiting the Respondents, jointly and severally, their employees, agents, representatives and or other persons acting on their behalf or under their instructions from investigating and/or prosecuting the Petitioners for any alleged offence arising from the 1st and 2nd Petitioner's execution of their duties and instructions as Advocates of the High Court of Kenya, specifically in relation to the drawing and attestation of the Last Will and Testament of one David Kiptoo Cheluget dated 1/07/2022, as well as the 3rd Petitioner's certification of copy of the said Will as a true copy of the original.*
- b. That costs shall be in the cause.*

- 9.** From the above findings by the session Judge Wananda J it is crystal clear that the initial ruling of this Court with a declaration the impugned last Testamentary (Will) of the deceased be subjected to the Document Examiner at the CID Headquarters Nairobi for forensic analysis as to its authenticity, legality and regularity in so far as the making of a Will is concerned runs foul the conservatory orders issued in the Petition No. E006 of 2025.
- 10.** The law on these issues raised by the Applicants and Respondents in their latest Notice of Motions is now well settled as deducible under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules; Thus Section 80 empowers the High Court as follows:

“1. Application for review of decree or order:

(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.”

11. The jurisprudence around this question on review jurisdiction is also on the same vein well settled as exemplified from the following decisions; first, in **Republic v 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;

- i. A court can review its decision on either of the grounds enumerated in Order 45 Rule 1 and not otherwise.*
- ii. The expression "any other sufficient reason" appearing in Order 45 Rule 1 has to be interpreted in the light of other specified grounds.*
- iii. 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.*
- iv. An erroneous order/decision cannot be corrected in the guise of exercise of power of review.*
- v. 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.*
- vi. 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.*
- vii. 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.*

- viii. *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.*
- ix. *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.*
- x. *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.*

When is review not maintainable by an Applicant?

- xi. *If is an Applicant makes a repetition of old and overruled arguments and is not enough to reopen concluded adjudications.*
- xii. *When an Applicant is aggrieved of minor mistakes of inconsequential imports.*
- xiii. *When the review proceedings cannot be equated with the original hearing of the case.*
- xiv. *It is settled law that review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
- xv. *The mere possibility of two views on the subject matter cannot be a ground for review.*

- xvi. *As already stated elsewhere review is not maintainable unless the material error, manifest on the face of the order undermines its soundness or result in the miscarriage of justice.*
- xvii. *The appreciation of evidence on record is fully within the domain of an appellate court and it is not permissible to be advanced in the review petition under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules.*

12. Likewise, the Court of Appeal in **National Bank of Kenya vs Ndungu Njau Civil Appeal No. 2111 of 1996** remarked 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 proceed on an incorrect expansion of the law.

13. The errors of fact and law being complained of by the Applicant relate with discussion in the impugned Ruling with regard to the last Testamentary of the deceased which subsequently was propounded by the Executor forming the basic structure of the certificate of confirmation of grant which is now strongly contested. This Court takes judicial notice of the existence of two forums all pointing at to the proceedings on inheritance rights under Succession Cause No. E111 of 2024 which is at the moment consisting of a certificate of confirmation of grant. As if that is not enough, there is already a Constitutional Petition referenced as E006 of 2025 and at the same time some of the beneficiaries are litigating before ELC in No. 115B of 2020. These two Constitutional forums are yet to give their final judgments on the merits, but in the interlocutory ruling of this Court one far reaching declaration as to the authenticity of the last

Testamentary of the deceased was made to the effect that the same be subjected to forensic analysis by the Document Examiner at the CID Headquarters in Nairobi. The second collateral order was that both the Petitioners and the Objectors provide sample writings and signatures of the deceased to the Deputy Registrar of the High Court who will in turn forward the instruments together with the last Will of the deceased to the County Criminal Investigating Officer for onward transmission to the Document Examiners at Nairobi. This is the bone of contention and the battleground as between the Petitioner and the Objectors to the Succession Cause No. E111 of 2024.

- 14.** What is the story behind the affidavits, and how can this Court answer the issues? In my considered view, beside the above authorities cited, I also find refuge in the case of **Nyamogo & Nyamogo vs Kogo (2001) EA 170** the Court discussed what would constitute a long-drawn process. It observed as follows;

.... An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of un definitiveness inherent in its very nature and it must be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. 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. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was possible. Mere

error or wrong view is certainly no ground for review though it may be one for appeal.

15. These same principles have been echoed by the Supreme Court of India which is also a common law jurisdiction from which our legal system is curated during the formative years of this Republic:

- **Kamlesh Verma vs. Mayawati & Ors. (2013) 8 SCC 320:** Established that review is maintainable only if there is a glaring, patent error on the face of the record, not a mere possibility of a different view.
- **S. Nagaraj vs. State of Karnataka (1993) SCC Supp (4) 265:** Held that review is permissible to prevent miscarriage of justice if the court is convinced its previous judgment was based on a manifest mistake of fact or law.
- **Parsion Devi vs. Sumitri Devi (1997) 8 SCC 715:** Clarified that a "mistake apparent on the face of the record" means a self-evident error, distinguishing it from an erroneous decision that requires rehearing to correct.
- **Union of India vs. Sandur Manganese & Iron Ores Ltd. (2013) 8 SCC 337:** Highlighted that errors must be material to the outcome to warrant a review.

16. The orders sought to be reviewed by the Applicants and as alluded by the Objectors/Respondents in their applications respectively suffers from an error apparent on the face of the record on grounds that there is already a Constitutional Petition Case File No. E006 of 2025 in which the session Judge has already issued conservatory orders against any investigations being initiated touching on the alleged Will or Last Testamentary of the Deceased. This Court therefore cannot purport to make a declaration for the same Will to a subject of forensic analysis by the Document Examiner whose terms include to verify the authenticity and authorship of the Will in question. To me this is also a form of scientific investigation and will be against the jurisdiction exercised by the constitutional Court presided over by Wananda J.

17. In the exercise of the jurisdiction under Order 45 Rule 1 it is permissible for the Court to exercise discretion for the correction of a mistake of fact and law without necessarily sitting on appeal of one’s own decision. Review of the earlier order made by the same Court cannot be done unless the Court is satisfied that material error, manifest on the face of the order undermines its soundness or results in the miscarriage of justice. This error must be one which is self-evident and not be one detected by a process of reasoning or logic.

18. As discussed above, and after reading all the orders of this Court which are available in the compilation of the record since this litigation commenced, I am satisfied that this Court being the ultimate custodian of the fundamental rights which touch on the inheritance of the properties survived of the deceased, there is *prima facie* evidence from Petition E006 of 2025 that no any other orders shall be issued by Courts of concurrent jurisdiction unless and until the Petition has been heard and determined on the merits. The consequential orders directing an inquiry of the Last Testamentary of the deceased by the Document Examiner are in conflict with the conservatory orders issued by Wananda J in the aforesaid Petition. In so far as the administration of justice is concerned, and in light of the principles noted above, the order on forwarding of signatures to the Document Examiner through the Uasin Gishu County CCIO is impermissible and the same is voidable. For avoidance of doubt, the impugned order is varied and set aside with no orders as to costs.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 19TH DAY OF MARCH 2026.

.....

R. NYAKUNDI
JUDGE