In re Estate of Njenga (Deceased) (Succession Cause E080 of 2024) [2026] KEHC 4408 (KLR) (1 April 2026) (Ruling)

Neutral citation: [2026] KEHC 4408 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

SUCCESSION CAUSE E080 OF 2024

RN NYAKUNDI, J

APRIL 1, 2026

IN THE MATTER OF THE ESTATE OF MARK JOEL NDICHU NJENGA (DECEASED)

BETWEEN

ESTHER NYAMBURA NDICHU ..... 1ST ADMINISTRATRIX

AGNES NGOIRI NDISHU ..... 2ND ADMINISTRATRIX

AND

NAHASHON NJENGA NDISHU ..... 1ST OBJECTOR

MICHAEL CHEGE NDISHU ..... 2ND OBJECTOR

RULING

1. Before this court for determination is an application dated 20th February, 2026 expressed under the provisions Order 45 Rule 1, Section 80 of the Civil Procedure and Rule 63 of the Probate and Administration Rules. The orders sought by the applicant are that:

    a. Spent.

    b. That there be a stay of execution of the Ruling delivered on the 27th January, 2026 pending the hearing and determination of these summons.

    c. That the Honorable Court be pleased to review its ruling/orders as follows:

        i. By invoking the slip rule on the incorporation of the mediation settlement agreement the omission in the decision of the payment of the Advocate charges from the estate it be included as follows:

        "5. Advocates fee owed to M/s. Wambua Kigamwa & Company Advocates and M/s Oduor Munyua & Gerald Attorneys to be paid from the deceased's estate."

ii. The finding at paragraphs 11-14 of the Ruling that parties had during the Court Annexed mediation settlement agreed on distribution of the assets in table 5.1 be set aside and in lieu thereof the same be distributed by the court.

iii. The finding in paragraph 18C (9) of the Ruling that Juja/Kiaura Block 14/568 and 569 0.0418 Ha combined as constituting a single integrated rental building spanning both plots allocated to house 2 be set aside and in lieu thereof the same be deemed to be separate properties with separate titles and buildings erected thereon and they be distributed according to the ratio of 7:4.

iv. The finding in paragraph 18C (13) on Eldoret Muncipality/ Block 15 (Huruma)/221 that it had been agreed on during mediation be set aside as the estate of the deceased had no such estate.

v. That the adminsitratrices be compelled in obedience and compliance with the adopted mediation settlement to deposit forthwith all rental income from 1st May, 2025 onwards into the joint account No. 1002114672 – NCBA Bank Ltd. I.N.O Michael Ndishu and Esther Ndishu.

vi. That Nahashon Njenga Ndichu alias Sasso the 3rd Respondent be restrained from interfering with the estate of the deceased by way of collecting rent from the rental property or dealing with the tenants therein and he be held to account for all rental income collected without authority and pays the same into the estate of the deceased.

vii. That the costs of this summons be provided for.

2. The application is based on the grounds on the face of it and on a supporting affidavit as sworn by Nahashon Njenga Ndishu.

3. As at the time of writing this decision, the Respondents did not endeavor to respond to the application. This court shall however proceed to determine the application on the merits.

Analysis and determination.

4. The law on review is well settled and the jurisdiction it confers upon a court is narrow in scope. A court seized of a review application does not sit on appeal over its own decision, nor does it embark on a wholesale re-evaluation of findings already made. The three established grounds upon which review may be sought are: the discovery of new and important matter or evidence that could not, with the exercise of due diligence, have been produced at the time of the original determination; a mistake or error apparent on the face of the record; or any other sufficient reason.

5. In Nyamogo & Nyamogo v Kogo [2001] EA 170, the court drew the crucial distinction between a mere erroneous decision and a true error apparent on the face of the record. The court stated 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."

6. The applicants raise six grounds in their application. The first is that the ruling as delivered omitted to incorporate clause 5 of the partial mediation settlement agreement dated 12th May, 2025, which provided that advocates fees owed to M/s Wambua Kigamwa & Company Advocates and M/s Oduor Munyua & Gerald Attorneys be paid from the deceased's estate. This court adopted the partial settlement agreement dated 25th April, 2025 in its entirety as an order of court at paragraph 9 of the ruling. The settlement agreement bears that provision as one of its terms, and the omission of the same from the operative orders of the ruling is a clerical oversight that falls squarely within the ambit of the slip rule.

7. The slip rule is a longstanding judicial tool that permits a court to correct errors that are plain and self-evident on the face of its own decision. Its essential character was restated by the Supreme Court of Kenya in Fredrick Otieno Outa v Jared Odoyo Okello & 3 others, SC Petition No. 6 of 2014, [2017] eKLR, where the court expressed itself in terms:

> "By its nature, the Slip Rule permits a Court of law to correct errors that are apparent on the face of the Judgment, Ruling, or Order of the Court. Such errors must be so obvious that their correction cannot generate any controversy, regarding the Judgment or decision of the Court. By the same token, such errors must be of such nature that their correction would not change the substance of the Judgment or alter the clear intention of the Court. In other words, the Slip Rule does not confer upon a Court, any jurisdiction or powers to sit on appeal over its own Judgment, or, to extensively review such Judgment as to substantially alter it."

8. The rule therefore draws a firm line between correcting what a court inadvertently left out or misstated, and revisiting what a court actually decided. A party cannot use the slip rule as a vehicle to reopen matters that were deliberately considered and determined. The correction must be one that restores the true and evident intention of the court, not one that introduces a new or different outcome.

9. Tested against that standard, the omission complained of in this ground is one that the slip rule is precisely designed to cure. This court at paragraph 9 of the ruling adopted the partial settlement agreement dated 25th April, 2025 in its entirety as an order of court, having found it to be comprehensive in scope and bearing the signatures of all relevant parties. The provision for payment of advocates fees from the estate was a term of that agreement. Its omission from the operative orders was therefore not a matter of judicial choice but a plain clerical gap. The court intended to give effect to the whole agreement and inadvertently failed to carry one of its terms through to the final orders. Correcting that omission does not alter the substance of the ruling or generate any controversy as to what this court decided. I accordingly grant this relief as sought.

10. The second ground challenges the finding at paragraphs 11 to 14 of the ruling that the parties, during the court-annexed mediation process, had agreed on the distribution of assets as set out in Table 5.1 thereof. The applicants depose, and the respondents have not controverted, that the mediation process only produced consensus on two matters: first, the identification and inventory of assets forming part of the estate of the deceased and second, the identification of the beneficiaries constituting each of the two houses. No agreement was reached on the mode of distribution of any of the estate properties between the houses. Looking squarely at the partial settlement agreement as reproduced at paragraph

8 of the ruling, the document sets out a comprehensive list of assets and liabilities as agreed but makes no allocation of any specific property to either house.

11. In the Supreme Court of India in the case of Ajit Kumar Rath v State of Orisa & Others, 9 Supreme Court Cases 596 at Page 608had this to say: -

> "the power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for stabling it. It may be pointed out that the expression "any other sufficient reason" ..... means a reason sufficiently analogous to those specified in the rule"

12. Having perused through the record, the allocations in Table 5.1 originated entirely from the affidavit of the 1st Administratrix, Esther Nyambura Ndichu, which was her own unilateral proposal for distribution. This court, in adopting Table 5.1 as reflecting the parties' agreed positions, proceeded on a factual premise that is not borne out by the record. That constitutes an error apparent on the face of the record within the meaning of Order 45 Rule 1. Accordingly, the finding that the parties agreed on the asset allocations in Table 5.1 is hereby set aside.

13. It must however be made abundantly clear that the setting aside of that characterization does not disturb the entire ruling. The statutory ratio of 7:4 in favour of House 1 and House 2 respectively, as derived from Section 40(1) of the *Law of Succession Act* and endorsed at paragraph 15 of the ruling, stands undisturbed. That finding was based on the law and on the undisputed family composition, and no ground has been raised against it. What this court corrects is only the erroneous finding that the parties had agreed on how to allocate specific properties. The distribution of those properties now falls to be determined either by the parties through a fresh consensual proposal or, failing that, by this court on the basis of the established 7:4 ratio.

14. The third ground relates to the treatment of land parcels Juja/Kiaura Block 14/568 and Juja/Kiaura Block 14/569. The ruling at paragraph 18C(9) found that the two parcels constituted a single integrated rental building spanning both plots, and allocated the combined unit to House 2. The applicants contend that this finding is erroneous, and that the two parcels bear separate parcel numbers, carry separate titles, have separate buildings erected on each, and are physically separated by a wall, with a valuation report on record in support of that position. That finding, on the face of the record, constitutes an error within the meaning of Order 45 Rule 1. The two parcels, Juja/Kiaura Block 14/568 and Juja/Kiaura Block 14/569, are hereby declared to be separate and distinct properties, each to be treated independently in the distribution of the estate and each generating its own rental income.

15. The fourth ground concerns the allocation of Eldoret Muncipality/ Block 15 (Huruma)/221 to House 1 at paragraph 18C (13) of the ruling. The applicants now contend that the deceased's estate has no such property and that the said allocation was therefore made in error. This court is unable to accept that contention on review, and for good reason. The property in question is expressly listed in the partial settlement agreement as one of the assets forming part of the estate of the deceased. That agreement was signed by all parties and adopted in its entirety as an order of this court. It is not open to a party to retract from a position they freely took and affirmed before this court in mediation proceedings and then seek to have the same reviewed on the basis that the property does not exist. To entertain such

a ground would amount to a review not of the ruling but of the mediation agreement itself, which is now an order of court. The parties are bound by what they agreed. Should there be a genuine dispute as to the existence or ownership of that parcel, the proper avenue remains a fresh application supported by evidence, and not a review proceeding of this nature. This ground therefore fails.

16. The fifth ground seeks to compel the administrators to deposit all rental income from 1st May, 2025 onwards into the joint account No. 1002114672 at NCBA Bank Limited in the names of Michael Ndishu and Esther Ndichu, as directed at paragraph 18D(14) of the ruling. The 1st Administratrix is said to have continued directing rental income from the estate properties into her personal account, contrary to the express terms of the ruling. This is not a matter requiring review, it is a matter of compliance. This court reiterates that direction in the clearest terms. The administrators are hereby ordered, with immediate effect, to deposit all rental income from estate properties into the said joint account from the date this court made a declaration on the same. Failure to comply shall be treated as contempt of court.

17. The sixth ground seeks to restrain Nahashon Njenga Ndichu alias Sasso, the 3rd Respondent, from collecting rental income from the estate properties or dealing with tenants without authority. It is alleged that the 3rd Respondent has been receiving rent from Juja/Kiaura Block 14/568 and 569 and discouraging tenants from depositing rent into the joint account. The administration of this estate is vested in the two appointed administrators. Any interference with estate property or rental income by a person not so appointed is intermeddling in the estate of the deceased, which is prohibited in law. The 3rd Respondent is accordingly restrained from collecting rent, engaging tenants, or in any other manner dealing with the estate properties of the late Mark Joel Ndichu Njenga without the authority of the administrators or an order of this court.

18. Having dealt with the foregoing grounds, it is necessary for this court to chart the way forward on the distribution of the estate properties in respect of which no settled position now exists following the amendments made herein.

19. In view of the history of this matter and the partial progress made through mediation, it would be premature for this court to impose a final distribution of the above properties at this stage without affording the parties one further opportunity to reach a consensual position. The parties are accordingly directed to file with this court their agreed or respective proposals for the distribution of the properties in question within thirty (30) days from the date of this ruling. The proposals shall be informed by and must reflect compliance with the 7:4 statutory ratio. Should the parties file agreed proposals within that period, this court shall adopt them as orders of court. Should no agreed proposals be filed or should the proposals filed remain contested, this court shall proceed to distribute all the said properties in accordance with the established ratio, without further reference to the parties. The parties are accordingly placed on notice that this is their final opportunity to participate in shaping the distribution of the remaining estate assets.

20. In the end, the following orders shall abide:

    a. The finding at paragraphs 11 to 14 of the ruling of 27th January, 2026 that the parties had agreed on the distribution of estate assets as set out in Table 5.1 is hereby set aside. The said assets remain undistributed and shall be dealt with in accordance with the directions herein.

    b. The ruling is reviewed to incorporate the following term of the partial settlement agreement: that advocates fees owed to M/s Wambua Kigamwa & Company Advocates and M/s Oduor Munyua & Gerald Attorneys be paid from the estate of the deceased."

c. Juja/Kiaura Block 14 (Waroma & Njemwa)/568 and Juja/Kiaura Block 14 (Waroma & Njemwa)/569 are hereby declared to be separate and distinct properties and shall be treated independently in the distribution of the estate.

d. The ground that Eldoret Muncipality/ Block 15 (Huruma)/221 does not form part of the estate is hereby dismissed. The property remains an estate asset in accordance with the partial settlement agreement of 25th April, 2025 as adopted by this court.

e. The administrators are directed to deposit all rental income from estate properties into Joint Account No. 1002114672 at NCBA Bank Limited, forthwith and on a continuing basis.

f. Nahashon Njenga Ndichu alias Sasso, the 3rd Respondent, is hereby restrained from collecting rent, dealing with tenants, or in any manner intermeddling with the estate properties of the late Mark Joel Ndichu Njenga without the authority of the administrators or further order of this court.

g. The parties shall file agreed or respective proposals for the distribution of the remaining estate properties, within thirty (30) days of this ruling. The proposals must reflect the 7:4 statutory ratio as established herein.

h. Each party shall bear its own costs given the nature of the matter herein.

21. Orders accordingly.

DATED SIGNED AND DELIVERED VIA CTS & EMAIL AT ELDORET, THIS 1ST DAY OF APRIL 2026

.....

R. NYAKUNDI

JUDGE