

REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE NO. 430 OF 2007

IN THE MATTER OF THE ESTATE OF KING'ORI MBOGO
BEN alias KING'ORI MBOGO (DECEASED)

SIMON MATU KING'ORI.....

APPLICANT

VERSUS

PATSON NDIRITU KING'ORI..... 1ST

RESPONDENT

ANDREW KIMATHI KING'ORI..... 2ND

RESPONDENT

MARY WANJIRU KING'ORI..... 3RD

RESPONDENT

RULING

1. This Ruling is in respect of the Summons dated 31.7.2025 and filed by the Applicant.
2. The Summons seeks for the following reliefs:
 - a) The Court be pleased to review its decision issued through the Ruling delivered on 27.5.2025.

- b) The Court be pleased to reallocate land parcel number Nyandarua/Magumu Township/27 from Mary Wanjiru King'ori to Martin Ndung'u King'ori.
 - c) The court do rectify the grant issued on 27.5.2025 to the extent that Martin Ndung'u King'ori be granted land parcel number Nyandarua/Magumu Township/27 absolutely.
 - d) The costs be provided for.
3. The application is supported by the Affidavit of the same date sworn by Andrew Kimathi King'ori and was based materially on the ground that that while rendering its Ruling on 27.5.2025, the court erroneously granted land parcel number Nyandarua/Magumu Township/27 to Mary Wanjiru King'ori against the consented mode of distribution which had allocated the said parcel to Martin Ndung'u Kingori.
 4. The Application was not seriously opposed. The Respondent lodged grounds of opposition dated 28.2.2026 contending that there was no error apparent on the fact of the record and the application sought to redistribute the estate.
 5. Only the Applicant filed submissions dated 5.2.2026 and submitted that this was a clerical error apparent that this court can correct through the slip rule. Reliance was placed on Section 99 of the Civil Procedure Act.

Analysis

6. The Jurisdiction of this Court to grant review is well set out in the law. 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. Order 45 of the Civil Procedure Rules provides for Review and it 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 rationale for the discretionary power of review is to find whether any evident error or omission needs correction or is otherwise a requisite for ends of justice. This power inheres in every court of plenary jurisdiction and is premised on preventing miscarriage of justice or an injustice. I associate myself with the reasoning of 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. The Appellant sought to review the Ruling of 27.5.2025 and rectify the consequential Grant. The rationale is clearly on account of the error apparent on the face of the record. The Court of Appeal in **Mahinda vs. Kenya Power & Lighting Co. Ltd [2005] 2 KLR 418** expressed itself as follows:

"The Court has however, always refused invitations to review, vary or rescind its own decisions except so as to give effect to its intention at the time the decision was made for to depart from this would be a most dangerous course in that it would open the doors to all and sundry to challenge the correctness of the decisions of the Court on the basis of arguments thought of long after the judgement or decision was delivered or made."

10. The Application cannot be said to be an appeal plea disguised as a review Application. The adopted proposal was for Mary Wanjiru King'ori to get 0.48 acres out of parcel number Nyandarua/Magumu Township/19 which was allocated to her. She was not to again get parcel number

Nyandarua/Magumu/Township 27 measuring 0.22 acres which was distributed to Martin Ndung'u Kingori. It is an honest error that is sought to be reviewed. The Code of Civil Procedure, *Volume III Pages 3652-3653* by **Sir Dinshaw Fardunji Mulla** states:

... The review cannot be treated as an appeal in disguise. The mere possibility of two views on the subject is not ground for review. The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, rule 1, Code of Civil Procedure...The review court cannot sit as an Appellate Court. Mere possibility of two views is not a ground of review. Thus, re-assessing evidence and pointing out defects in the order of the court is not proper.

11. The Applicant also sought to that the grant as issued be rectified to reflect the reviewed amendment. The nature of the errors sought to be rectified herein relate to the amendment of the grant. **In the Matter of the Estate of Geoffrey Kinuthia Nyamwinga (Deceased) [2013] eKLR,** the court stated thus:

“The law on rectification or alteration of grants is Section 74 of the Law of Succession Act and Rule 43 of the Probate and Administration Rules....What these provisions mean is that errors may be rectified by the

court where they relate to names or descriptions, or setting out the time or place of the deceased's death. The effect is that the power to order rectification is limited to those situations, and therefore the power given to the court by these provisions is not general....

Where a proposed amendment of a grant cannot be dealt with under the provisions of Section 74 of the Law of Succession Act, the applicant ought to approach the court under Order 44 of the Civil Procedure Rules. A review under Order 44 of the Civil Procedure Rules may be sought upon discovery of new and important matter or on account of some mistake or error apparent on the face of the record, or for any sufficient reason. The applicant in this case should have moved the court under this provision-Order 44 of the Civil Procedure Rules on account of some mistake or error apparent on the face of the record and on the ground that there exists a sufficient reason for review of the certificate of the confirmation of the grant.”

12. The rectification sought by the Applicant is aimed at incorporating the amendments that arose from the error apparent on the face of the record. I will therefore allow the rectification to facilitate distribution of the estate without any contrary information that persons who are not beneficiaries

are being introduced or that proper allocations to beneficiaries are being varied.

13. The net effect is that I allow the Application and rectify the grant.

Determination

14. In the upshot, I make the following orders:

- (i) The Ruling of this court dated 27.5.2025 is hereby reviewed on the account of an error apparent on the face of the record.
- (ii) The Grant issued on 27.5.2025 is rectified to the extent that Martin Ndung'u King'ori is hereby granted land parcel number Nyandarua/Magumu Township/27 that was erroneously granted to Mary Wanjiru King'ori.
- (iii) Transmission be completed by 30.11.2026.
- (iv) Directions on transmission on 9/12/2026 before the Deputy Registrar.
- (v) There be no order as to costs.
- (vi) File is closed.

DELIVERED, DATED and SIGNED at **NYERI** on this **30th** day of **April, 2026**. Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE
JUDGE

In the presence of: -

Mr. Kanyoni Gachoka for the Applicant.

No Appearance for C.M King'ori.

No Appearance for other Respondents.

Three beneficiaries as per the list.

Court Assistant: Michael/Martin

ORIGINAL