REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

SUCCESSION CAUSE NO. E021 OF 2023

IN THE MATTER OF THE ESTATE OF KOE ARAP SITIENE (DECEASED)

DAVID KIPKEMOI SANG ..... 1ST PETITIONER

VERSUS

CHERUIYOT CHERUIYOT ALIAS

JOAN CHEPNGETICH SITIENEI ..... 2ND PETITIONER

R U L I N G

1. The Petitioners are all beneficiaries of the deceased and his estate comprised of KERICHO/KIPSONOI S.S/1438. From the record, the deceased has two wives and his dependants were as follows: -

1st House.

i) David Kipkemoi Sang — Son

ii) Sarah Chepkorir Ngetich — Daughter

iii) Samwel Cheruiyot Koe — Son

iv) Florence Sitienei — Daughter

v) Julius Kiprotich Koe — Son

vi) Mercy Chepkemoi — Daughter

2nd House

i) Cheruiyot Cherotich alias

Joan Chepngetich Sitienei — Daughter

2. In a Ruling delivered on 12th May 2025, this court ruled that the deceased's estate would be distributed as follows: -

KERICHO/KIPSONOI S.S/1438 (58 acres)

1st House.	45 acres.
2nd House	13 acres.

QUARRY SITE WITHIN KERICHO/KIPSONOI S.S/1438

To be divided equally among the 1st house and the 2nd house

Notice of Motion Application dated 23rd May 2026.

3. Being aggrieved by the Ruling dated 12th May 2025, the 1st Petitioner (Applicant) filed a Notice of Motion Application dated 23rd May 2026 which sought the following orders: -

I. Spent.

II. THAT this Honourable Court be pleased to review the order issued vide the Ruling dated 12th May 2025 in respect of the distribution of the estate of the deceased.

III. THAT this Honourable Court be pleased to capture the cash held in the bank account held by the deceased at Co-operative Bank, Bomet Branch Account Number 01116358421900 in the inventory of assets of the estate.

IV. THAT this court be pleased to issue any order it may deem just and fit to grant.

4. The Application was brought under **sections 1A, 1B, 3A and 80 of the Civil Procedure Act, Order 45 Rule 1a, b and 3** and **Order 51 Rule 1 of the Civil Procedure Rules.** The Application was based on the grounds on the face of the Application and further by the annexed Supporting Affidavit of David Kipkemoi Sang sworn on 23rd May 2025.

The Applicant's case.

5. The Applicant stated that contrary to the 2nd Petitioner's assertion that the deceased had no liabilities, the deceased

left behind several liabilities who had purchased the suit land directly from him during his lifetime. That the court ought to review its findings and include the liabilities. The Applicant further stated that there was no evidence to indicate that the deceased had settled them during his lifetime and this court ought to reconsider the same.

6. It was the Applicant's case that the family agreement dated 22nd November 2019 allocated the 2nd house 10 acres of land and not the 13 acres as ruled by this court. It was the Applicant's further case that the six acres that were mentioned by the 2nd Petitioner were a figment of her imagination as there was no proof to show the existence of the 6 acres.

7. The Applicant stated that they inadvertently omitted to include the deceased's bank account held in Co-operative Bank, Bomet Branch. That in light of the documentary

evidence produced, it was imperative for this court to review its Ruling.

Response

8. Through its Replying Affidavit dated 3rd June 2025, the 2nd Petitioner (Respondent) stated that the Applicant had not demonstrated any new important evidence to warrant the review of the Ruling dated 12th May 2025. That the Applicant was faulting the Ruling and could only do so through an Appeal.

9. It was the Respondent's case that she was unaware that the deceased held a bank account at Co-operative Bank and there was no indication of the amount of money held in it. That in the absence of proof ownership of the bank account, there was insufficient evidence and the same could not form part of the estate. It was the Respondent's further case that the two alleged purchasers listed in the Chief's Letter have

no acreage against their names hence casting doubt on the authenticity of the said letter.

10. The Respondent stated that the beneficiaries from the 1st household had denied her access to the quarry after this court ruled that the quarry should be shared equally. The Respondent further stated that the deceased had allocated her 10 acres and had set aside 6 acres for himself (where he lived) and upon distribution, this court shared the 6 acres between the two households.

11. It was the Respondent's case that the annexed Affidavits have not listed when the alleged purchasers purchased their respective portions and they could not act as sale agreements. That one of the purchasers in the Chief's Letter, Weldon Rotich was the registered owner of KERICHO/KIPSONOI S.S/1439 which bordered the deceased's estate and the deceased had already transferred the same to him during his lifetime. That the Applicant wanted to disinherit her.

12. Through her Further Affidavit dated 5th June 2025, the Respondent stated that Judy Chepnegtich Kirui who was listed in the Chief's Letter as a purchaser was the registered owner of KERICHO/KIPSONOI S.S/1123 by virtue of the transfer executed between her and the deceased on 23rd November 2010.

13. I have gone through and considered the Notice of Motion Application dated 23rd May 2025, the Replying Affidavit dated 3rd June 2025, the Further Affidavit dated 5th June 2025 and the respective parties' written submissions. The only issue for my determination was whether the Application has met the requirements for a grant of a Review Order.

14. It is trite law that the High Court has a power of Review. The law on Review is based on **section 80 of the Civil procedure Act** and **Order 45 Rule 1 of the Civil Procedure Rules, 2010**. It is salient to note that this

court's power must be exercised within this circumscribed legal framework.

15. **Section 80 of the Civil Procedure Act** 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 judgement to the court, which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

16. **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 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 review of judgement to the court

which passed the decree or made the order without unreasonable delay.

17. From the above provisions, it is clear that **section 80 of the Civil Procedure Act** gives the power of Review while **Order 45 of the Civil Procedure Rules 2010**, sets out the rules. The rules limit the grounds applicable for Review as follows: -

    (i) The discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the Applicant or could not be produced by him at the time when the Decree was passed or the Order made.

    (ii) On account of some mistake or error apparent on the face of the record.

    (iii) Any other sufficient reason and that the Application has to be made without unreasonable delay.

18. The Supreme Court of India in the case of **Ajit Kumar Rath vs State of Orisa & Others, 9 Supreme Court Cases 596** stated as follows: -

> ***"…….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".

19. The Court of Appeal in **Tokesi Mambili and others vs Simion Litsanga (2004) eKLR held**: -

"i. In order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.

ii. Where the application is based on sufficient reason it is for the Court to exercise its discretion."

20. On the ground of an error apparent on the face of the record, the court in **Zablon Mokua v Solomon M. Choti & 3 others [2016] KEHC 683 (KLR)** held: -

"In Muyodi vs. Industrial and Commercial Development Corporation & Another [2006] 1 EA 243, the Court of Appeal described an error apparent on the face of the record as follows:

" In Nyamogo & Nyamogo -vs- Kogo (2001) EA 174 this Court said that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is real distinction

between a mere erroneous decision and an error apparent on the face of 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 long drawn process of reasoning or 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 or wrong view is certainly no ground for a review although it may be for an appeal. This laid down principle of law is indeed applicable in the matter before us." (Emphasis mine)

21. Similarly, I am persuaded by Mativo J. (as he then was) in **Republic v Advocates Disciplinary Tribunal Ex parte**

Apollo Mboya [2019] KEHC 6379 (KLR) where he stated: -

> ***"The starting point is 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……."***

22. I have carefully gone through and considered the Application and the parties' submissions. The Applicants have not demonstrated any error that is apparent on the face of the record. It is therefore my finding that they have not established or satisfied this ground of review.

23. Regarding the ground of discovery of new material that was not within the court's knowledge when it delivered its Ruling, Mativo J.'s (as he then was) findings in **Nasibwa Wakenya Moses v University of Nairobi & another [2019] KEHC 11472 (KLR),** stated: -

> ***"To qualify to be new evidence so as to fall within the ambit of order 45 Rule 1 of the Civil Procedure Rules, the new evidence must be of such a nature that it could not have been within the knowledge of the applicant despite the exercise of due diligence."***

24. Similarly, in the case of **Rose Kaiza v Angelo Mpanju Kaiza [2009] KECA 422 (KLR),** the Court of Appeal held that: -

"Applications on this ground must be treated with great caution and as required by r 4(2) (b) the Court must be satisfied that the materials placed before it in accordance with the formalities of the law do prove the existence of the facts alleged. Before a review is allowed on the ground of a discovery of new evidence, it must be established that the applicant had acted with due diligence and that the existence of the evidence was not within his knowledge; where review was sought for on the ground of discovery of new evidence but it was found that the petitioner had not acted with due diligence, it is not open to the court to admit evidence on the ground of sufficient cause. It is not only the discovery of new and important evidence that entitles a party to apply for a review, but the discovery of any new and important matter which was not within the knowledge of the party when the decree was made." (Emphasis mine)

25. Under this head, the Applicant stated that the deceased had left behind liabilities to his estate and this court should review its Ruling and include them in the distribution of the estate. I have gone through the record and this issue was raised before this court ruled on distribution. I equally addressed this issue in the Ruling dated 12th May 2025 to wit: -

> ***"On the issue of the liabilities, the 1st Petitioner alleged that the deceased's estate had liabilities in the form of purchasers and set aside 19.7 acres of the deceased's estate to cover such purchasers. On the other hand, the 2nd Petitioner denied that their father sold part of his estate and that the 1st Petitioner wanted to disinherit her. I have keenly gone through the record and there was no evidence that the estate had liabilities. At the very least, the 1st Petitioner could have filed an affidavit or affidavits from***

such purchasers to indicate that they had purchased part of the deceased's estate. In any event, such a sale would be illegal because the current succession proceedings had not terminated and any interference with the deceased's estate before completion of succession proceedings would amount to intermeddling under section 45 of the Law of Succession Act, which is a criminal offence."

26. Taking the cue from the finding above, the Applicant attached a Chief's Letter dated 14th May 2025 detailing the alleged purchasers and Affidavits from ten (10) alleged purchasers all dated 21st May 2025. It is clear from the above that the Applicant's annextures were all filed after the Ruling was delivered and that decision was premised on the court's findings above.

27. In my view, the Applicant being the 1st Petitioner was not diligent in presenting his case. He was aware of the issue of purchasers as he raised the same before this court's Ruling on distribution but he did not attach any evidence at that point. He sought to introduce such evidence after the Ruling had been delivered in an attempt to convince this court to review its Ruling. It is my finding therefore that the issue of alleged liabilities/purchasers had been determined conclusively by this court and the Applicant's recourse lay through an Appeal and not a review.

28. On the issue of the deceased's bank account, I am not convinced by the Applicant's assertion that he inadvertently omitted the bank account as part of the deceased's estate. This goes back to my earlier finding of indolence. The Applicant was not diligent in presenting his case yet he was aware of the alleged existence of the deceased's bank account. It is salient to note that the Applicant only stated that the deceased had a bank account domiciled at Co-operative Bank, Bomet Branch but did not attach any

evidence of ownership. I agree with the Respondent that the alleged bank account could not form part of the deceased's estate. It is my finding therefore that this was not a discovery of evidence that was not within the Applicant's knowledge despite the exercise of due diligence.

29. On the ground of any other sufficient reason, the Court of Appeal in Registered **Trustees of the Archdiocese of Dar es salaam vs Chairman of Bunju Village Government & Others, Civil Appeal No. 47 of 2006,** observed that: -

> ***"It is difficult to attempt to define the meaning of the words sufficient cause. It is generally accepted however, that the words should receive a liberal construction in order to advance substantial justice, when no negligence, or inaction or want of bona fides, is imputed to the Appellant."***

30. The Court of Appeal in **Pancras T. Swai v Kenya Breweries Limited [2005] KEHC 1832 (KLR)** held that: -

> ***"……..As repeatedly pointed out in various decisions of this Court, the words, "for any sufficient reason" must be viewed in the context firstly of Section 80 of the Civil Procedure Act, Cap 21, which confers an unfettered right to apply for review and secondly on the current jurisprudential thinking that the words need not be analogous with the other grounds specified in the order."***

31. I have looked keenly at the record and it is my finding that there no sufficient reason for this court to review its Ruling dated 12th may 2025. It is clear that this court addressed itself sufficiently on the matters raised by the Applicant as above. Asking for a review on the grounds cited by the Applicants would be akin to be asking this court to sit on appeal on its own decision.

32. In the end, having considered the Application in its entirety, I find that the grounds cited by the Applicant did not qualify to be grounds for review to bring the Application within the ambit of the grounds specified in **Order 45 Rule 1 of the Civil Procedure Rules.** It is my finding that this was not a proper case for the court to grant the review sought. Accordingly, the invitation to review the Ruling dated 12th May 2025 is declined.

Protest dated 14th October 2025

33. Mercy Chepkemoi filed her Protest dated 14th October 2025 and stated that she did not agree with the distribution of the deceased's estate more so, the contentious parcel of land that measured 6 acres that had been retained by the deceased for his use. That the said parcel measured 5 acres and the deceased sold 2. 15 acres during his lifetime. The Protestor further stated that the deceased in his lifetime,

allocated her the remaining 2.85 acres where she was fully settled with her children.

34. It was the Protestor's case that this land was not available for distribution as the deceased had invited her back home after she had marital issues with her husband. That it was not in dispute that the deceased had allocated the 2nd household 10 acres but the 3 additional acres that the court distributed was fictitious. It was the Protestor's further case that the court amends the distribution to reflect the reality on the ground and that the court should issue orders that are capable of being implemented.

35. The Petitioner stated that the deceased had indicated that the quarry should not be divided or interfered with. That the subdivision would lead to other parties disposing off their shares and this was against the wishes of the deceased.

Response

36. Through her Replying Affidavit dated 16th October 2025, the 2nd Petitioner stated that Mercy Chepkemoi was a beneficiary from the 1st household and was aware of the proceedings yet never raised any objection. That after the Grant had been confirmed, mercy had not filed for its revocation and that members of the 1st household had resorted to filing numerous Applications. The 2nd Petitioner further stated that the Ruling dated 12th May 2025 settled the issue of distribution.

37. It was the 2nd Petitioner's case that the attempt to reopen the distribution was an abuse of the court process and amounted to forum shopping. That Mercy was a beneficiary and ought to claim her share from the 45 acres allocated to the 1st household.

38. The 2nd Petitioner stated that the quarry could not remain undistributed and the 1st household could not be allowed to

benefit from the quarry alone. That this court correctly distributed the quarry equally between the two households.

Protest dated 15th October 2025

39. The 1st Petitioner filed his Affidavit of Protsest dated 15th October 2025 and stated that he was aggrieved by the distribution on the quarry and further stated that the deceased's wish was to have the quarry intact so that the whole family could use it. That the deceased expressed the same in the presence of village elders. The 1st Petitioner further stated that no family member had been denied access and use of the quarry.

Response

40. Through her Replying Affidavit dated 16th October 2025, the 2nd Petitioner stated that the 1st Petitioner was a beneficiary from the 1st household and was aware of the proceedings yet never raised any objection. That after the Grant had been confirmed, the 1st Petitioner had not filed for its revocation and that members of the 1st household had resorted to filing

numerous Applications. The 2nd Petitioner further stated that the Ruling dated 12th May 2025 settled the issue of distribution.

41. It was the 2nd Petitioner's case that the attempt to reopen the distribution was an abuse of the court process and amounted to forum shopping. That the 1st Petitioner was a beneficiary and ought to claim her share from the 45 acres allocated to the 1st household.

42. The 2nd Petitioner stated that the quarry could not remain undistributed and the 1st household could not be allowed to benefit from the quarry alone. That this court correctly distributed the quarry equally between the two households.

43. I have carefully gone through and considered the Affidavits of Protests dated 14th and 15th October 2025 and the Replying Affidavits both dated 16th October 2025 and the respective parties' written submissions. The only issue for

my determination was to determine whether the Protests have merit.

44. The main grievances that I have sieved from the two Protests was the distribution of the piece of land that measured 6 acres and the distribution of the quarry. Mercy Chepkemoi claimed that the disputed land actually measured 5 acres and half of it had been sold to purchasers and the other half had been allocated to her by the deceased during his lifetime. On this issue, after careful analysis of the evidence and facts presented, this court found that the impugned 6 acres had been occupied by the deceased in his lifetime and divided the same equally to the two households upon his death. The court had given its Ruling on this distribution and Mercy's recourse lay in an Appeal or Review Application.

45. On the distribution of the quarry, this court held: -

"On the issue of the quarry site, the 1st Petitioner wanted it to be divided equally among the beneficiaries while the 2nd Petitioner wanted it to be shared equally among the two houses. As guided by the authorities above and section 40 of the Law of Succession Act, the division of this quarry shall be done equally among the two houses. However, without the benefit of a Surveyor's Report on KERICHO/KIPSONOI S.S/1438, it is difficult for this court to decipher what acreage the quarry site occupied within the deceased's estate."

46. Again, after careful analysis of the evidence and facts presented, this court distributed the quarry equally between the two households. The court had given its Ruling on this distribution and the 1st Petitioner's recourse lay in an Appeal or Review Application.

47. It is clear from the above that the two Protests were disguised as an Appeal. The two Protestors were dissatisfied with the court's finding on distribution. Asking this court to reconsider its decision on distribution would be akin to asking it to sit on an Appeal on its own decision. The Court of Appeal in **National Bank of Kenya Limited vs Ndungu Njau [1997] KECA 389 (KLR)** held that: -

> ***"In the instant case the matters in dispute had been fully canvassed before the learned Judge. He made a conscious decision on the matters in controversy and exercised his discretion in favour of the respondent. If he had reached a wrong conclusion of law, it could be a good ground for appeal but not for review. Otherwise we agree that the learned Judge would be sitting in appeal on his own judgment which is not permissible in law……."***

48. Flowing from the above, it is my finding that the Protests dated 14th October 2025 and 15th October 2025 have no merit and are accordingly dismissed.

Notice of Motion Application dated 19th May 2025.

49. In this Application, the 2nd Petitioner sought an order directing the Officer Commanding Chebole Police Station to render security to the County Surveyor and County land Registrar Bomet County who will be visiting L.R No. KERICHO/KIPSONOI S.S/1438 for the purpose of demarcation and subdivision in accordance with the Certficate of Grant dated 12th May 2025.

50. The 1st Petitioner through a Replying Affidavit dated 3rd June 2025 opposed the Application stating that it was premature as he had filed a Review Application.

51. I have considered the Application and its response and note that this court has dealt with the Review Application

hereinabove and dismissed the same. The court has equally dismissed the two Protests meaning that the Ruling dated 12th May 2025 remains legal, valid and enforceable. There was no other contest in regards to the prayer for provision of security during the demarcation and subdivision process. In the circumstances thereof, I allow the Notice of Motion Application dated 19th May 2025.

52. In the end, I make the following orders: -

I. The Notice of Motion dated 23rd May 2025 is dismissed.

II. The Protests dated 14th November 2025 and 15th November 2025 are dismissed.

III. The Officer Commanding Chebole Police Station is ordered to provide security to the County Surveyor and County land Registrar Bomet County when they visit L.R number KERICHO/KIPSONOI S.S/1438 for the purpose of demarcation and subdivision.

IV. Each Party will bear their own costs.

Ruling delivered, dated and signed at Bomet this 30th Day of April, 2026.

.....

HON. JULIUS K. NG'ARNG'AR

JUDGE

Ruling Delivered in the presence of;

Susan/Siele Court Assistant

Langat for the 1st Applicant