

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**SUCCESSION CAUSE NO. 86 OF 2010**

**IN THE MATTER OF THE ESTATE OF JESIMORE WASWA  
WAOSIA (DECEASED)**

**-AND-**

**FRONIKA N. NABUKWANGA MUSIAYO .....**  
**PETITIONER**

**AND**

**LONGINUS WAFULA MUTAMA .....**  
**OBJECTOR/APPLICANT**

**RULING**

- 1.** The Applicant filed the present Summons for Revocation or Annulment of Grant under Section 76 of the Law of Succession Act, dated 19th May 2025, seeking the following ORDERS:
  - (1) The Applicant herein who is now of majority age be granted leave to proceed with this matter by himself rather than the next friend.
  - (2) The Ruling and Orders dated 31<sup>st</sup> January 2024 be reviewed and/or set aside.
  - (3) (3) Costs of this Application to be provided for.
- 2.** The application is supported by the Applicant's sworn affidavit and the grounds on its face. It is averred that the Applicant is now of full age and capable of representing himself or of appointing his own advocates, and that he

was never given an opportunity to be heard, contrary to the rules of natural justice and the Constitution of Kenya 2010.

3. He deposes that previously there was a disconnect between him and the advocate appointed to represent him, and that he was never made aware of the proceedings that gave rise to the Ruling dated 31st January 2024, which he learned of five months later.
4. He asserts that he is the deceased's only child and refutes the allegations that the deceased had no child. He deposes that the advocate on record, the Objector/Petitioner, and Stephen Seme Wafubwa, his paternal cousin, never called him to give evidence in court, and that he is now seeking justice.
5. He avers that his father died after marrying several wives, and that his mother, Maximiller Nanjala Barasa, had remained with him for over 9 years before his death. He also says that he was in hospital receiving treatment with his mother when he was called to be informed that his father wanted to see him before he died. However, his father died and was buried before they arrived. He asserts that he is a beneficiary of the deceased and that it is only in the interests of justice that he seeks the prayers in the Application.
6. In response to the application, Fronika Nabukwangwa Musiayo, the Petitioner herein, opposed it on the grounds that the Applicant was properly represented in the proceedings before the Court and that he personally

appeared before the Court as an adult, accompanied by his mother.

7. It is averred that the Applicant himself refused to attend court and to give evidence; that at all times he was aware that the Petitioner was handling the case on his behalf while he was represented by counsel; and that he had never sought to represent himself since attaining adulthood.
8. She denied that the Applicant's mother had stayed with the deceased for over nine years and deposed that the court bent over backwards to ensure that the Applicant appeared before it, so his assertions that he was unaware of the proceedings or the Ruling were a blatant lie. Further, it is denied that the deceased asked to see him on his deathbed, and it is urged that, since Judgment has already been rendered in the matter, there is no sufficient reason to renew the case, and, as such, the Application ought to be dismissed.
9. Parties took directions to canvass the Application by written submissions, which were filed.

### **THE SUBMISSIONS**

10. Counsel for the Applicant filed submissions dated 11th September 2025, in which he submitted that the Applicant appeared only once during the proceedings, while he was still a minor. He further submitted that it is discernible that he did not appear and write a statement concerning the Application dated 31st March 2011 because of his young age and an illiterate mother, rendering him unable to

prosecute the Application, which was of a technical nature, a scenario frowned upon by the provisions of Article 159 (d) of the Constitution.

- 11.** Counsel submits that it is unconstitutional and an affront to justice to reject the Applicant's Application merely on a technicality, thereby entirely denying him the right to inherit his father's estate, as the only child of the deceased.
- 12.** It is argued that, in any event, the Applicant is merely seeking an opportunity to be heard on his own, and that the orders sought are not final, since the Petitioner will have a right to be heard. It is in the interests of justice that they seek the Court's intervention.
- 13.** The Petitioner's submissions are dated 24th September 2025. Counsel for the Petitioner submits that the application seeks the revocation of the Grant of Letters of Administration issued to the Petitioner. It is further submitted that the original notice in this matter was filed on behalf of the Applicant on 20th April 2010, and that judgment was delivered on 30th January 2024. The present Application was then instituted on 19th May 2025, almost one and a half years later. Yet the Applicant was aware of the said proceedings and of his representation by one Steve Seme Wafubwa. He was also aware that witnesses were being brought to testify on his behalf, and he never made any objections or filed Applications challenging the proceedings.
- 14.** It is further submitted that the Applicant personally appeared in court as an adult after the court made

repeated efforts to have him appear, and he never objected to being represented by the said Steve Seme. Instead, alongside his mother, he opted not to appear in court subsequently or to take part in the proceedings to give evidence.

**15.** The Petitioner denied in its submissions that the Applicant was never given an opportunity to be heard, as it was the Applicant who refused to attend court and tender evidence. The fact that he also admitted to a disconnect between himself and the advocate appointed to represent him was a clear indication that he knew of the proceedings and of his advocate, yet chose not to inform the court when and why the disconnect occurred. No grounds have been adduced to warrant a review of the Ruling or the nullification of the Grant issued to the Petitioner, and, further, the Court gave a reasoned ruling after a full hearing of the parties, who were represented by counsel.

a. It is urged that the application be dismissed, as the Applicant, dissatisfied with the ruling, has opted not to file an appeal but to circumvent the law by bringing the present Application.

### **ANALYSIS AND DETERMINATION**

**16.** From the pleadings before me and the rival submissions, I note that the only issue for my determination is whether the Application is merited and should be allowed.

**17.** The crux of this application is that the Applicant seeks a review or setting aside of the Ruling and Orders dated 31st January 2024. At the same time, the Application is premised

on Section 76 of the Law of Succession Act, which provides for the revocation of grants. I will first consider whether the Applicant has established grounds for revocation of the Grant.

**18.** Section 76 of the Law of Succession Act provides grounds for revocation of Grant as follows: -

**76. Revocation or annulment of grant**

**A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—**

**(a) that the proceedings to obtain the grant were defective in substance;**

**(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;**

**(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;**

**(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either—**

**(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or**

**(ii) to proceed diligently with the administration of the estate; or**

**(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or**

**(e) that the grant has become useless and inoperative through subsequent circumstances.**

**19.** The Applicant herein contends that there was a disconnect between him and the advocate who had been appointed to represent him. He also said that he was never called as a witness by his paternal cousin, Steve Seme Wafubwa, or by the Petitioner, his step-mother, to testify in court during the proceedings, and therefore his interests were not considered. He further asserted that he was now of the age of majority and wanted to take up the matter on his own and represent himself. However, in my view these grounds, they do not constitute reasons for the revocation of the Grant. There is nothing in the Applicant's arguments that points to any of the grounds listed under Section 76. Thus, the said Grant cannot be revoked.

**20.** Turning to the issue of whether this Court can review its Ruling dated 31<sup>st</sup> January 2024, I have considered the law on review under Section 80 of the Civil Procedure Act which stipulates:

**80. 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,**

**21.** Order 45 of the Civil Procedure Rules, 2010 also sets out the grounds upon which a court of law may review its orders as follows: -

**Rule 1**

**(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.**

**22.** The scope of review was discussed by the Supreme Court of India in *Ajit Kumar Rath vs State of Orisa & Others*, 9 Supreme Court Cases 596 at Page 608 thus: -

*“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” used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.”*

**23.** It follows then that a review can only lie where there is an error apparent on the face of the record, there is a discovery of new material facts that were not previously within the knowledge of the said parties or for any other sufficient cause.

**24.** Courts have cautioned parties against pursuing the avenue of review when an appeal would be the most suitable forum for redress of their issues. In *National Bank of Kenya Ltd vs*

Ndungu Njau (1996) KLR 469 (CAK) at page 381, the Court of Appeal held:

*“In my discernment, an order cannot be reviewed because it is shown that the judge decided the matter on a foundation of incorrect procedure and or that his decision revealed a misapprehension of the law, or that he exercised his discretion wrongly in the case. Much less could it be reviewed on the ground that the other judges of coordinate jurisdiction and even the judge whose order is sought to be reviewed have subsequently arrived at different decisions on the same issue? In my opinion the proper way to correct a judge’s alleged misapprehension of the procedure or the substantive law or his alleged wrongful exercise of discretion is to appeal the decision unless the error be apparent on the face of the record and therefore requires no elaborate argument to expose.”*

**25.** Similarly, *Abasi Belinda vs Fredrick Kangwamu and another* (1963) E.A 557, Bennet J. held that: -

*“a point which may be a good ground of appeal may not be a good ground for review and an erroneous view of evidence or law is not a ground for review though it may be a good ground for appeal.”*

**26.** In this case, the Applicant argues that he was never called to testify and that he is likely to be disinherited if the Court does not intervene and grant the orders sought. He does not explain whether there was an error apparent on the face of the record, or whether he has discovered any new

and material information that was not within the Court's purview when the Ruling was rendered on 31st January 2024. All he asserts is that he had a disconnect with his advocate and that he never got to testify. His first argument, that he had a disconnect with his advocate, negates his assertion that he was unaware of the proceedings throughout.

- 27.** The second ambit, that he was not given a chance to testify in the proceedings and to represent his interests, is also untrue. This Court (differently constituted before Hon. Riechi J.) on 30th March 2022 directed the Applicant and his mother, Maximillia Nanjala Barasa, to file witness statements ahead of the hearing on 12th May 2022. They, however, failed to do so or to appear before the Court to tender viva voce evidence. In other words, the Applicant was afforded an opportunity to present his case after he had attained the age of majority but opted not to.
- 28.** Further, I am of the view that some of the issues being raised, such as the fact of his disinheritance arising from this Court's Ruling, would be best ventilated on appeal rather than in a review by this Court.
- 29.** In the premises, I find no material evidence before me to warrant the revocation of Gant or a review of this Court's Ruling dated 31st January 2024. The Application lacks merit and is consequently dismissed. Each party to bear its own costs.

**Dated, signed and delivered Virtually this 30<sup>th</sup> Day of April 2026.**

**R.E.OUGO**

**JUDGE**

**In the presence of;**

**Fronika Musiayo- Applicant**

**Longinus Mutama - Respondent**

**Counsels - Absent**

**Wilkister - C/A**

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