

REPUBLIC OF KENYA
MILIMANI HIGH COURT AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. E294 OF 2025
IN THE MATTER OF THE ESTATE OF SULEIMAN
MURUNGA KASUTI

RULING

INTRODUCTION

1. The application dated 28th November 2025 is presented under Section 66 of the Law of Succession Act and under Rules 12, 16, 21, 22, 26, 27, 36, 49 and 63 of the Probate and Administration Rules, under Section 1A, 1B and 3A of the Civil Procedure Act and under Order 45 of the Civil Procedure Rules, and seeks the following substantial orders-
 - a. THAT this Honourable Court be pleased to review and set aside the ruling and order dated 14th November 2025, issued by Hon. Lady Justice Nyaundi Patricia Mande SC in Milimani HCFP&A E294 of 2025, In the Estate of Suleiman Murunga Kasuti, to the extent that it appoints Maureen Murunga, Halima Achando Murunga and Halima Nekoye as administrators.
 - b. THAT Rose Polyn Nyambura be appointed as interim Administrator to the Estate of Suleiman Kasuti Murunga (Deceased) pending her appointment as a full administrator to the estate.
 - c. Costs be provided for.
2. The application is based on the grounds set out in the application and is supported by the affidavit of Brian Sitati

Kisabuli, sworn on 28th November 2025. It is averred that the Petition of 6th November 2025 was not served on the deceased's surviving widow, Rose Polyne Nyambura; she was not cited, and she had not renounced her superior rights to make the application.

3. It is submitted that the Court should review its orders, as the grant was issued to strangers to the estate and, in respect of Maureen Murunga, to a person who never applied for a grant. It is averred that the grant offends the express provisions of Section 66 of the Law of Succession Act, which grants absolute first priority to a surviving spouse. The ruling is also challenged on the basis that the other parties were not heard.
4. It is averred that the administrators under the grant have used it to intimidate and harass the beneficiaries of the estate, for instance in relation to the property Nairobi/ Block 91/23. The relationship between Halima Achando Murunga and the deceased is disputed.
5. The application is opposed. Halima Nekoye Murunga has sworn an affidavit on 19th January 2026. She asserts that the administrators are all children of the deceased. Apart from Rose Polyne Nyambura, the deceased had two other

wives, indicating he was polygamous. She avers that, in any event, Rose Polyne Nyambura's acts of intermeddling are well documented, which make her unsuitable to be appointed as administrator.

6. Zainab Haji Omar has also sworn an affidavit in opposition on 27th January 2026. She asserts that she is a surviving spouse and that the administrators are the deceased's children. She avers that the Court exercises its discretion in appointing administrators. She avers that the Court can correct the error by amending the grant to exclude Maureen Murunga. She avers that Rose Polyne Nyambura is ill-suited to be appointed administrator.

ANALYSIS AND DETERMINATION

7. None of the parties filed submissions as directed. Upon consideration of the pleadings herein in light of the relevant law, I deduce the issue for determination to be

- a. Whether the Court should review its orders of 14th November 2025
- b. Arising from (a) above, what, if any, are the consequential orders?

8. At the outset, I am aware that, at the time of delivering this ruling, the application has been overtaken by events, as the

Grant of letters *ad colligenda bona defuncti* has expired. It was valid for 3 months from 14th November 2025 and therefore lapsed on 13th February 2026. That notwithstanding, the issues raised by the applicant in challenging the issuance of the grant are germane, and the Court is obliged to make a pronouncement to give direction on how the proceedings herein ought to progress, hopefully leading to an early determination of the succession cause.

9. The legal principles that guide courts in considering an application for review are those set out under Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules

10. In **Republic -vs-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 stated;

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.**

11. Further in **Nyamogo & Nyamogo v 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.

12. In the instant case, it is averred that the errors on the face of the record are-

- a. The appointment of a stranger (Halima Achando Murunga) as administrator, it is submitted that she is neither a child or dependant of the deceased
- b. The appointment of the 3 administrators in notwithstanding the fact that Rose Polyne Nyambura ranks in priority contrary to Section 66 of the law of succession Act

c. Failure to give notice and an opportunity to other parties to be heard on Petition dated 6th May 2025 resulting in the impugned ruling of 14th November 2025.

13. The outcome of this application turns on whether the errors are such as to pass the test laid out in the above-cited decision of Nyamogo & Nyamogo (Supra). From that decision, it can be gleaned that for an application for review to succeed on this ground, the error 'must be apparent'. It cannot be an issue that sparks debate or controversy, or one that turns on the court's interpretation of the evidence before it. In my view, all three issues challenge the court's determination of the facts and its interpretation of the applicable law, and therefore, as established by judicial precedent, the channel open to the applicant was one of review and not appeal.

14. The applicant challenges the relationship of Halima Achanda Murunga to the deceased. In the application dated 12th May 2025, which he supported by his affidavit sworn on 4th November 2025, he refers to the 3 Petitioners in the Petition lodged in Court as his sisters. Rose Polyne Nyambura, the applicant in the application dated 12th May 2025, in her affidavit sworn on the same date, at paragraph

3, stated that the 3 Petitioners were daughters of the deceased. On that ground alone, this defeats the plea for review.

15. It is averred further that Section 66 is mandatory in application and that the Court has no discretion in the matter. This is contrary to the explicit provisions of the statute which provides as follows-

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference -

- (a) surviving spouse or spouses, with or without association of other beneficiaries;**
- (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided in Part**
- (c) the Public Trustee; and**
- (d) creditors.**

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

16. The Court's discretion is also well established by judicial precedent, for instance in the decision **In the Estate of David Mwangi Mwarangu (Deceased) [2019] eKLR**, where the Court underscored that ultimately discretion lies with the Court and stated as follows-

the court in as much as it should adhere to the provisions of section 66 of the Law of Succession Act, should consider the facts of the case and determine the same in the interests of justice.

17. On this issue, since the applicant takes issue with the exercise of the Court's discretion in appointing the 3 administrators, the available channel is appeal, not review.

18. The final issue turns on the interpretation of Section 67 of the Act as read with rules 7(4), 7(5) and rule 36 of the Probate and Administration Rules. Again, the decision turns on the Court's interpretation of the law and therefore is not a matter for review but rather for appeal.

19. The applicant has an additional prayer for appointment as 'interim' administrator pending her appointment as full administrator. The law of succession does not provide for the appointment of an interim administrator. The Act provides for Limited Grants under Section 54, and Schedule V sets out the limited circumstances in which an applicant may present such an application. The current application does not specify which limited grant the applicant seeks and is therefore incompetent.

20. In the ruling of 14th November 2025, I stated that the Court has the mandate to ensure that the estate of a

deceased person is administered and transmitted without delay. An estate should never be in limbo. For this reason, I directed that Zainab Haji Omar, Catherine Nabwala Muldte Okumu and Rose Polyne Nyambura jointly apply for letters of administration within 45 days, to coincide with the expiry of the grant of letters of administration *ad colligenda*.

21. To date, this has not happened, and the indications are that it may not. This was not a suggestion. In the event that the 3 fail to present a joint application within 30 days, the pending petition for the grant of letters of administration, lodged on 9th April 2025 by Maureen Murunga, Halima Achando Murunga and Halima Nekoye Murunga, shall be mentioned before the Deputy Registrar on 17th June 2025 to confirm that it is ready for gazettelement.

22. Once the same is gazetted, the beneficiaries will have an opportunity to contest the issuance of the grant and to have their competing interests determined, because ultimately the estate must be administered and transmitted to the rightful beneficiaries and the process is initiated by a Petition and gazettelement.

23. On account of the relationship between the parties, there shall be no order as to costs.

24. Parties are at liberty to appeal, and the Party exercising that right to do so within 30 days.

It is so ordered

**SIGNED, DATED AND DELIVERED IN VIRTUAL COURT
THIS 30th DAY OF APRIL 2026.**

**P. M NYAUNDI
JUDGE**

In the presence of:

Fardosa Court Assistant

Olunya for the 2nd Respondent

Ms. Maina for Zainab Haji Omar

ORIGINAL