



REPUBLIC OF KENYA



**In re Estate of the Late Iraya Kabaiko (Deceased) (Succession Cause 130 of 2008) [2026] KEHC 5437 (KLR) (28 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5437 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
SUCCESSION CAUSE 130 OF 2008**

**RN NYAKUNDI, J**

**APRIL 28, 2026**

**IN THE MATTER OF THE ESTATE OF THE LATE IRAYA KABAIKO  
(DECEASED)**

**BETWEEN**

**LUCY WANGUI KABAIKO ..... APPLICANT**

**AND**

**JANE WANGARI KABAIKO ..... RESPONDENT**

**RULING**

1. What is pending before this Honourable Court for determination is a Notice of Motion Application dated 10<sup>th</sup> November 2025 premised under Order 45(1)(b) and Order 51(1) of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act* where the Applicant is seeking the following orders: -
  - a. Spent.
  - b. This Honourable Court be pleased to review its orders in its ruling dated 29<sup>th</sup> September, 2025 and set aside forthwith.
  - c. This Honourable Court be pleased to dismiss the summons for Account dated 13<sup>th</sup> September, 2024.
  - d. Costs of this Application be provided for.
2. The Application is made on the following grounds on the face of it among others: -
  - a. Summons were taken on behalf of an individual who has since been fully paid her share of what accrued to their house hold and is unaware of the proceedings.



- b. The advocates acting for the Respondent/1<sup>st</sup> Applicant are not properly on record as they did not seek and obtain leave of the court.
  - c. The Respondent/1<sup>st</sup> Applicant herein, Lucy Wangui Kabaiko was not candid with information as she has been partly paid her share of what accrued from the sale of the property.
  - d. There is no decree on record attached to the summons' application.
  - e. Parties are yet to extract the decree and the Applicant cannot be condemned in the absence of a decree.
  - f. The Applicant has always been willing to settle the matter amicably out of court whenever the Respondent/1<sup>st</sup> Applicant has sought assistance, but she has repeatedly changed her position after receiving payment.
  - g. The Applicant cannot enforce a decree which does not exist.
  - h. There is an error apparent on the face of the record as there is no decree in place.
  - i. It is in the best interest of justice that the application herein be granted.
3. The Application is supported by the annexed affidavit sworn by Jane Wangari Kabaiko, the Applicant herein who deponed as follows: -
- a. That I am a female adult of sound mind and disposition hence competent to swear this Affidavit.
  - b. That summons was taken on behalf of an individual who has since been fully paid her share of what accrued to their household and is unaware of the current proceedings.
  - c. That I have never been served with any decree of this Honorable Court requiring me to undertake any action as directed by the court.
  - d. That I am aware that judgment in this matter was delivered on 28<sup>th</sup> October, 2014 regarding the status of the Estate.
  - e. That my advocates on record have advised me, which advice I verily believe to be true and sound in law, that upon delivery of judgment, the parties had two options: either to appeal or to extract the decree of the court.
  - f. That my advocates have further advised me, which information I verily believe to be true, that no decree of the court has ever been issued or extracted in respect of the said judgment.
  - g. That the Respondent/1<sup>st</sup> Applicant has not been candid with the facts of the matter. I am aware that my sister, Alice Wangui Kabaiko, who is indicated as the 2<sup>nd</sup> Applicant, was not part of the Applicants in this matter.
  - h. That the Respondent/1<sup>st</sup> Applicant herein has already received a substantial amount of money from the sale of the property in question.
  - i. That it is the Respondent /1<sup>st</sup> Applicant who obtained an order of this Honourable Court to block further release of the remaining funds and as a result, my account remains frozen to date.
  - j. That I have always been willing to settle the matter amicably out of court whenever the Respondent/1<sup>st</sup> Applicant has sought assistance, but she has repeatedly changed her position after receiving payment.



- k. That there exists an error apparent on the face of the record, in that there is no decree in place to support the Respondent/1<sup>st</sup> Applicant's present application or any enforcement proceedings.
- l. That I make this Application in support of my application herein and it is therefore in the interest of justice that the application herein be allowed as prayed.

### **Grounds of Opposition**

4. The Application is opposed by the Respondent vide Grounds of Opposition dated 23<sup>rd</sup> November 2025 based on the following grounds: -
  - a. That the application was brought under wrong format as this is succession matter.
  - b. That the application does not meet the pre-requisite of review set by the law.
  - c. That the applicant Jane Wangari Kabaiko ought to have furnished the court with the certified copy of true accounts of the estate herein however her affidavit is devoid of evidence to that effect hence to review.
  - d. That the applicant's application herein is frivolous, vexatious, otiose, unmerited and or an abuse of the court's due process as such it ought to be dismissed with costs.
  - e. That the application dated 10<sup>th</sup> November, 2025 is unmeritorious and deserves one fate that is dismissal with costs.
5. The Application was canvassed by way of written submissions.

### **Applicant's written submissions summary**

6. The Applicant filed her written submissions dated 3<sup>rd</sup> December 2025. The learned counsel for the Applicant Mr. Bosek submitted that the court should exercise its power to review and set aside the ruling dated 29<sup>th</sup> September 2025 and dismiss the Summons for Account dated 13<sup>th</sup> September 2024. The primary contention is that while a judgment was delivered in this matter on 28<sup>th</sup> October 2014, no decree has ever been extracted, which contravenes Order 21 Rule 7 of the Civil Procedure Rules. Counsel argued that the extraction, approval and sealing of a decree is a mandatory prerequisite for any enforcement or subsequent proceedings; thus, the Summons for Account lacks a legal foundation and the resulting orders, including the freezing of the Applicant's account, are irregularities apparent on the face of the record.
7. Counsel further submitted that the legal threshold for review is met in this instance based on the discovery of self-evident errors. Drawing from the case of Republic Vs Public Procurement Administrative Review Board & 2 others [208] eKLR, the Applicant noted that Section 80 and Order 45 limit review to specific grounds, including mistakes or errors apparent on the face of the record and other sufficient reasons. This position was reinforced by referencing Abdalla & 6 others Vs Khansa Developers Limited & 3 others (Constitutional Petition 16 of 2022) KEELC 3667 (KLR), which cited Sese (Suing as the Administrator of the Estate of the Late Shali Sese) Vs Karezi & 8 others [2023] KEELC 17427 (KLR) to emphasize that the power of review is distinct from appellate jurisdiction and must be strictly confined to self-evident errors that do not require elaborate argument.
8. Critically, the learned Counsel for the Applicant Mr. Bosek challenged the competence of the Summons for Account, asserting it was initiated on behalf of a person who was neither involved in the proceedings nor aware of them and who had already been fully paid her share of the estate. Counsel argued that the Respondent's advocates are not properly on record as they failed to seek the court's



leave after the judgment was delivered. To support the claim that the suit is incurably defective, counsel cited ELC 1038 of 2012 (Originating Summons), where it was held that a party cannot litigate on behalf of others without their authority or knowledge, rendering such proceedings void ab initio.

9. In conclusion, the learned Counsel Applicant maintained that the Respondent/1<sup>st</sup> Applicant has misrepresented facts and withheld material information, specifically regarding the receipt of substantial proceeds from property sales, to ground a Summons that is fundamentally an abuse of the court process. The learned counsel emphasized that the current orders have caused significant hardship by freezing the Applicant's bank account without any legal basis, necessitating the intervention of the court to correct these procedural errors and prevent further injustice. Under these circumstances, the learned Counsel for the Applicant urged the court to allow the Notice of Motion dated 10<sup>th</sup> November 2025 and grant the sought orders.

### **Respondents Written Submissions Summary**

10. The Respondent filed written submissions dated 4<sup>th</sup> December 2025. The learned counsel for the Respondent Mr. Barasa submitted that the Applicant has demonstrated a persistent and willful failure to comply with a valid court order issued on 28<sup>th</sup> October 2014, which required the filing of a true and just account of the deceased's estate within sixty days. Despite the passage of eleven years, the learned Counsel for the Applicant Mr. Barasa submitted that the Applicant has failed to provide these accounts, leading to a subsequent ruling on 29<sup>th</sup> September 2025 which required the administrators to appear and show cause why they should not be committed to jail for obstructing justice. Counsel critically argued that the Applicant's current application, dated 10<sup>th</sup> November 2025, fails to show any steps toward compliance and instead attempts to seek a review where no apparent error on the record exists.
11. Counsel made reference to the following authorities: *Hadkinson Vs Hadkinson* (1952) 2 ALL ER 56, *Republic Vs County Chief Officer, Finance & Economic Planning, Nairobi City County Ex parte Stanley Muturi* [2018] eKLR and *Teacher's Service Commission vs. Kenya National Union of Teachers & 2 Others* Petition No. 23 of 2013. Furthermore, the learned Counsel argued that the Applicant cannot claim ignorance of the court's directives, as the judgment in question included orders that froze the Applicant's bank accounts at I&M Bank and a decree was extracted and served. The Learned Counsel submitted that the Respondent characterizes the Applicant's recent legal filings as "gymnastics" intended to avoid the main judgment rather than fulfilling the requirement to file proper estate accounts. Ultimately, the learned Counsel for the Respondent submitted that the application dated 10<sup>th</sup> November 2025, is an afterthought lacking merit and should be dismissed.

### **Analysis and Determination**

12. Having carefully considered the Application, the rival affidavits, the submissions by learned counsels, there is one (1) issue manifest for determination by this Honourable Court: -
  - a. Whether the Applicant has met the legal threshold for the grant of orders of review under Order 45 of the Civil Procedure Rules.
13. The jurisdiction of this Honourable Court to entertain the aforesaid application is provided for under section 47 of the *Law of Succession Act* which provides as follows: -
  47. Jurisdiction of High Court



The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.

14. This jurisdiction of this Honourable Court is supplemented by Rule 73 of the Probate and Administration Rules, which preserves the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Accordingly, this Court is properly seized of jurisdiction to entertain the present application.
15. The law governing review is now settled. Under Order 45 Rule 1 of the Civil Procedure Rules, a party seeking review must demonstrate one or more of the following: discovery of new and important matter or evidence which was not within their knowledge and could not be produced at the time the order was made; an error apparent on the face of the record; or any other sufficient reason. In particular, Order 45 Rule 1 of the Civil Procedure Rules 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 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.
16. The core principal for review of a ruling or judgement include the following under Order 45 Rule 1 of the Civil Procedure Rules:
  - a. Discovery of new evidence: review is permissible if new and important matter/evidence is discovered matter/evidence is discovered which, after the exercise of due diligence, was not within the knowledge of the party or could not be produced at the time the decree/order was passed.
  - b. Error apparent on the face of the record: The error must be self-evident and not require a long-drawn process of reasoning to be established.
  - c. Other sufficient reason: This principle has been interpreted to mean a reason "analogous to the other conditions" in the rule (i.e., errors similar to those apparent on the record).
  - d. No reviews on merits/hearing: A review cannot be maintained merely because a different view is possible on the same evidence.
17. It is equally settled that review is not an avenue for a party to reargue its case, nor is it a substitute for an appeal. The jurisdiction is circumscribed and must be exercised judiciously and sparingly. The Court



of Appeal in Civil Appeal No. 2111 of 1996, National Bank of Kenya Vs Ndungu Njau, remarked on review applications as follows: -

“...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. It will not be sufficient ground for review that another Judge could have taken a different view of the matter nor can it be a ground for review that the court proceeds on an incorrect expansion of the law.”

18. In Republic Vs Advocates Disciplinary Tribunal Ex parte Apollo Mboya [2019] KEHC 6379 (KLR) the Court considered the import of some mistake or error apparent on the face of the record as captured in Order 45 of the Civil Procedure Rules. It rendered itself thus: -

“... Review is impermissible without a glaring omission, evident mistake or similar ominous error. 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. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by an order or review. The power of review is available only when there is an error apparent on the face of the record. I emphasize that review proceedings are not an appeal. The review must be confined to error apparent on the face of the record and re-appraisal of the entire evidence or how the judge applied or interpreted the law would amount to exercise of Appellate Jurisdiction, which is not permissible.”

19. In the present application, the Applicant’s principal argument is that there exists an error apparent on the face of the record by reason of the alleged failure to extract a decree following the judgment delivered on 28<sup>th</sup> October 2014. The Applicant contends that in the absence of such a decree, the Summons for Account and the subsequent ruling of 29<sup>th</sup> September 2025 lack a legal foundation. This Court is unable to agree with that position. First and foremost, this matter arises within the context of succession proceedings, where the Court exercises probate jurisdiction. While the Civil Procedure Rules may apply in certain respects, they do not override the substantive provisions of the *Law of Succession Act*, which govern the administration of estates. In this regard, the obligation imposed upon the Applicant is not merely procedural but statutory in nature.
20. The following orders were given vide a judgement dated 28<sup>th</sup> October 2014 with regard to this succession cause by the then session Judge George Kimondo Kanyi J: -

37. For all the foregoing reasons, and in the interests of justice, I finally order as follows-
- a. That the grant of letters of administration issued by the Court to the three respondents and confirmed on 20<sup>th</sup> July 2009 be and is hereby revoked. A fresh grant shall be applied for by not more than four beneficiaries comprising of some of the applicants and respondents and representing the three houses of the deceased.
  - b. That the transfer of the property known as title number Eldoret Municipality Block 6/103 to the interested is upheld. Accordingly, the prayer for injunction to restrain dealings in the property or to forbid the Registrar of Lands at Eldoret from registering any further transfer is hereby dismissed.



- c. That the prayer by Jane Wangari Kabaiko in the summons dated 19<sup>th</sup> July 2012 to be enjoined into the summons dated 2<sup>nd</sup> July 2012 is hereby dismissed.
- d. That I order that account number 01700634162 held by the 1<sup>st</sup> respondent at I&M Bank and account number 015019045659 held by the 1<sup>st</sup> respondent at Equity Bank be and are hereby frozen until the respondents render a true and just account to the estate as particularized below or until further orders of the Court.
- e. That the respondents shall render a true and just account of the estate. They shall file, at their own cost, before the Deputy Registrar of the Court a full statement of the account of the estate prepared by a recognized Certified Public Accountant of Kenya within the next sixty days of this decree.
- f. That the respondents shall meet the costs of the interested party. However, as between the applicants and the respondents, and considering that this is a family dispute, there shall be no order on costs.

It is so ordered.

21. Section 83 of the [Law of Succession Act](#) imposes mandatory duties upon personal representatives, including the duty to produce to the Court a full and accurate inventory and account of the estate. In particular, section 83 of the [Law of Succession Act](#) provides as follows: -

83. Duties of personal representatives

Personal representatives shall have the following duties -

- (a) to provide and pay, out of the estate of the deceased, the expenses of a reasonable funeral for him;
- (b) to get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
- (c) to pay, out of the estate of the deceased, all expenses of obtaining their grant of representation, and all other reasonable expenses of administration (including estate duty, if any);
- (d) to ascertain and pay, out of the estate of the deceased, all his debts;
- (e) within six months from the date of the grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- (f) subject to section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this section and the income therefrom, according to the respective beneficial interests therein under the will or on intestacy, as the case may be;
- (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
- (h) to produce to the court, if required by the court, either of its own motion or on the application of any interested party in the estate, a full and accurate inventory of the



assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;

- (i) to complete the administration of the estate in respect of all matters other than continuing trusts and if required by the court, either of its own motion or on the application of any interested party in the estate, to produce to the court a full and accurate account of the completed administration.

22. This duty as provided in section 83 of the *Law of Succession Act* is couched in mandatory terms and is not dependent on the extraction or service of a decree. It arises both from statute and from the orders of the Court. The judgment delivered on 28<sup>th</sup> October 2014 clearly required the administrators to render accounts within a specified period. That obligation has remained outstanding for over eleven years. In *re Estate of Julius Mimano (Deceased)* [2019] eKLR the Court analyzed the unique position in law held by the personal representative of a deceased person by stating as follows: -

“...personal representatives administer estates on the strength of legal instruments made to them by the probate court. The vesting of the estate of the deceased on the personal representatives by virtue of section 79 of the Act, flows from the instrumentality of the grant of representation. Upon representation being made, the grant holder then becomes entitled to exercise the statutory powers conferred upon personal representatives by section 82 of the Act and incurs the duties imposed on them by section 83 of the Act. Additional powers flow from and duties are imposed by other statutes, such as the *Trustee Act*. Under section 82 of the Act, there are powers to enforce and defend causes of action on behalf of the estate, to sell or convert estate assets, to assent to vesting of bequests and legacies on the beneficiaries, among others. Acts done or actions taken on behalf of the estate or for the benefit of the estate would have to be accounted for. In other words, the personal representatives are bound to account for every action they take on behalf of the estate, for they exercise the powers on delegation.”

23. The obligation to render accounts by a personal representative is not a matter of discretion or negotiation, but a mandatory statutory duty imposed under Section 83 of the *Law of Succession Act*. The provision expressly requires administrators to produce to the Court a full and accurate inventory and account of the estate, including all dealings therewith from the date of grant to the completion of administration. This duty goes to the core of the fiduciary role of personal representatives who hold the estate in trust for the beneficiaries and are answerable to both the Court and those beneficiaries. It is therefore not open to an administrator to question, defer or condition compliance with this obligation on procedural technicalities such as the extraction of a decree or alleged conduct of other parties. Once the Court issues a directive requiring accounts, compliance becomes immediate and obligatory.

24. In the present matter, the duty to render accounts was reinforced by the judgment delivered on 28<sup>th</sup> October 2014, which imposed a clear timeline for compliance. The Applicant’s continued failure to furnish accounts, coupled with attempts to challenge the process through a review application, amounts to a deliberate evasion of a non-negotiable legal obligation. The requirement to account is central to transparency, accountability and the proper administration of estates and cannot be circumvented without undermining the integrity of the succession process. Accordingly, the rendering of accounts remains an indispensable and enforceable duty and the Court is justified in taking firm measures, including contempt proceedings, to ensure compliance.

25. Consequently, this Court finds that there is no error apparent on the face of the record as alleged. The issue raised by the Applicant requires substantive argument and interpretation of the law and cannot be said to be a self-evident error warranting review.



26. The Applicant has also raised the issue of the Respondent’s legal representation, contending that the advocates on record are improperly before the Court for failure to obtain leave. This Court finds that this issue is not only belated but also immaterial to the determination of the present application. The judgment in this matter was rendered on 28<sup>th</sup> October 2014, and the proceedings have since progressed to enforcement. The question of representation at this stage does not affect the validity of the Court’s orders or the Applicant’s obligation to comply with them. It is therefore a non-issue for purposes of this application.
27. Further, the Applicant alleges that the Respondent has already received her share of the estate and was not candid with the Court. While such allegations may, in appropriate circumstances, warrant consideration, they do not fall within the ambit of review under Order 45. With this I put reference to section 107, 108 and 109 of the Evidence Act which states that the burden of proof lies upon the party who asserts the existence of a fact. In view of this, the rule of evidence is clear that “He who alleges must prove”. The maxim has been grounded in law under Section 107 of the Evidence Act. The same was enunciated by late Justice Majanja in *Evans Otieno Nyakwana Vs Cleophas Bwana Ongaro* [2015] eKLR when he said that: - “...As a general proposition the legal burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue. That is the purport of section 107 (1) of the Evidence Act (Chapter 80 of the Law of Kenya) which provides: - “107. (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist...”
28. Section 108 of the Evidence Act states that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. For avoidance of doubt, the provision states as follows: -“The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side.” In addition, section 109 of the same Act states: - “The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”
29. From the above, the issue that the Respondent has already received her share of the estate and was not candid with the Court is a matter of fact that would require evidentiary proof and cannot be characterized as errors apparent on the face of the record. They do not constitute new evidence that was previously unavailable, nor do they amount to sufficient reason to warrant review.
30. This Court must also consider the broader context of this application. The ruling of 29<sup>th</sup> September 2025, which the Applicant seeks to review, was issued after the Court noted the Applicant’s continued failure to comply with its earlier orders requiring the filing of accounts. The Court, in that ruling, directed the administrators to appear and show cause why they should not be committed to civil jail for contempt of court. The present application, rather than demonstrating compliance or willingness to comply, seeks to challenge the very foundation of the obligation.
31. Moreover, this Honourable Court in its ruling dated 29<sup>th</sup> September 2025, laid down the applicable legal and constitutional framework governing the conduct of parties in succession proceedings and, more particularly, the obligation to comply with court orders. The Court invoked Article 159(2)(d) of the Constitution, emphasizing that it is mandated to administer justice without undue regard to procedural technicalities, and further relied on Section 47 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules, which collectively vest this Court with wide jurisdiction and inherent powers to determine disputes and make such orders as may be necessary for the ends of justice. In that regard, the Court underscored that it is not constrained by procedural objections where substantive justice demands otherwise. The Court proceeded to define and contextualize the concept of civil contempt, adopting the exposition in Halsbury’s Laws of England, wherein it is stated that:



“...disobedience to process is a civil contempt of court to refuse or neglect to do an act required by a judge or order of the court within the time specified in the judgment...”

32. Further reliance was placed on the decision in *Milka Wangoi Kamau & another Vs Habby Misoga Lugadiru* [2014] eKLR, where the essential elements of contempt were articulated as requiring proof that the contemnor was aware of the court order, that the order was valid and capable of being obeyed, and that there was deliberate breach thereof. The Court was also careful to highlight the quasi-criminal nature of contempt proceedings, noting that although they arise in civil litigation, they may result in deprivation of liberty, thus necessitating a higher standard of proof. This position was reinforced through the authority of *Mutitika Vs Baharini Farm Ltd* [1985] KLR 229, where it was held that: “...the standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly, beyond reasonable doubt...”
33. Upon applying the above principles to the facts before it, the Court found that there existed a valid and subsisting order issued on 28<sup>th</sup> October 2014 requiring the Respondents to render a true and just account of the estate within sixty days. The Court observed that this order had neither been complied with nor credibly challenged. Consequently, the Court held that a prima facie case of non-compliance had been established. The Court firmly reiterated that a party against whom an order is directed has no discretion to ignore it, and must either comply or promptly approach the Court for clarification or variation. In this respect, the Court cited with approval the holding in *Trusted Society of Human Rights Alliance Vs Cabinet Secretary for Devolution and Planning & 3 others* [2017] eKLR, where it was stated: “A Court order is binding on the party against whom it is addressed and until set aside remains valid and is to be complied with.”
34. The Court went further to emphasize that willful disobedience of court orders strikes at the very heart of the rule of law and the administration of justice. Drawing from comparative jurisprudence in *AG Vs Times Newspapers Ltd* (1973) 3 All ER 45, the Court observed that contempt of court is conduct that undermines the authority of the judicial system and erodes public confidence in the administration of justice. Similarly, the Court of Appeal in *Abdi Satarhaji & Another Vs Omar Ahmed & Another* [2018] eKLR was cited for the proposition that: “Contempt of court is constituted by conduct that denotes willful defiance of or disrepute towards the court... It is the plain and unqualified obligation of every person... to obey it unless and until that order is discharged.”
35. In reinforcing the rationale behind the enforcement of court orders, the Court also relied on *Sheila Cassatt Issenberg & another Vs Antony Machatha Kinyanjui* [2021] eKLR, where it was held that sanctions for contempt are necessary to uphold the dignity and authority of the Court, ensure compliance and preserve public confidence in the judicial process. Ultimately, the Court concluded that the conduct of the parties, particularly the continued failure to comply with a lawful order, was inimical to the administration of justice and could not be countenanced. The Court further linked this obligation to Article 10 of *the Constitution*, noting that adherence to the rule of law is a fundamental national value binding upon all persons.
36. In reiterating these principles in the present ruling, this Court affirms that the findings and reasoning contained in the ruling of 29<sup>th</sup> September 2025 remain sound, applicable and binding. The obligation to comply with court orders, particularly those requiring the rendering of accounts, is absolute and non-negotiable and any attempt to circumvent such compliance through procedural objections or collateral challenges cannot be sustained in law. The law is clear that court orders must be obeyed that a party who is in contempt of court should not be heard unless they have purged their contempt. (See *Hadkinson Vs Hadkinson* (1952) 2 All ER 56). I note that the Applicant herein has not demonstrated any effort to comply with the Court’s orders and instead seeks to rely on technical objections to avoid compliance. This conduct amounts to an abuse of the Court process.



37. In the premises, this Court finds that the Applicant has failed to satisfy any of the conditions necessary for the grant of an order of review. The application is devoid of merit and intended to delay the course of justice. Accordingly, the Notice of Motion Application dated 10<sup>th</sup> November 2025 is hereby dismissed. In order to ensure compliance with the law and to bring this matter to a just conclusion, this Court hereby issues the following orders: -

- a. That the Applicant herein Jane Wangari Kabaiko shall furnish to this Honourable Court a full, accurate and verified account of the estate in strict compliance with Section 83 of the *Law of Succession Act* within thirty (30) days from the date hereof.
- b. That in default of compliance with Order (a) above within the stipulated period, the Applicant shall be committed to civil jail for contempt of court without further reference to this Court.
- c. This matter shall be mentioned on 17<sup>th</sup> May 2026 for a status conference to confirm compliance and to issue further directions as the Court may deem fit.
- d. There shall be no orders as to the costs this being a family matter.
- e. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 28<sup>TH</sup> DAY OF APRIL 2026**

.....

**R. NYAKUNDI**  
**JUDGE**

