

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAKURU
ELC NO. E037 OF 2024

**ANNIE WAMUYU WAMBUGU (SUING AS
THE ADMINISTRATOR of the
ESTATE OF JOSEPH
W. MUNDIA.....APPELLANT/APPLICANT**
VERSUS
SOLOMON K. RUGUT1ST RESPONDENT
**DISTRICT LAND REGISTRAR,
NAKURU.....2ND RESPONDENT**

RULING

1. This ruling is in respect of a Notice of Motion Application dated 4th December, 2025, by the Appellant/Applicant seeking the following orders:
 1. *Spent.*
 2. *THAT the honourable court be pleased to review, vary and/or set aside its finding on 2nd December, 2025, to the extent that the Limited Grant ad Litem attached therein erroneously bears the name Willy Maina instead of the correct holder, Annie Wamuyu Wambugu.*
 3. *THAT the Applicant be granted leave to file and deem as duly filed the correct Limited Grant ad Litem issued in the name of ANNIE WAMUYU WAMBUGU, the proper administrator ad litem of the estate of Joseph W. Mundia (Deceased).*

4. THAT the appeal and any attendant applications be reinstated and/or deemed competent upon correction of the error.

5. THAT the costs of this application abide by the outcome of the appeal.

2. The application is based on the supporting affidavit of Annie Wamuyu Wambugu the Applicant, who deponed that she is the Administrator of the Estate of Joseph W. Mundia. She further deponed that on 29th July, 2025, her advocates on record filed an application in good faith and in the belief that the correct Limited Grant ad Litem had been annexed, and the court in its ruling delivered on 2nd December, 2025, noted that the grant attached was issued to one Willy Maina and not her, which led to the striking out of the Application together with the Appeal for lack of capacity.

3. The Applicant also stated that the wrong grant had been annexed due to a purely inadvertent error and mistake, which was clear and apparent on the face of the record, as she had sworn the supporting affidavit herself. She further deponed that the correct grant ad litem issued in her name could not be produced earlier due to the advocate's clerical mistake and that the correct grant had been sent to the Respondent on 27th September, 2024, and that counsel was also aware that she possessed the proper authority to act for the estate. The Applicant urged the court to allow the application for review to enable her to prosecute the Appeal.

RESPONDENT'S CASE

4. The 1st Respondent, Solomon K. Rugut vide his Replying Affidavit sworn on 17th January, 2026, averred that the application was an abuse of the court process, designed to circumvent a clear and reasoned judicial determination. He further averred that the application was premature and incurably defective for failing to satisfy the strict statutory prerequisites for review under Order 45 of the Civil Procedure Rules.

5. It was the respondent's disposition that the alleged inadvertent error of annexing the wrong Limited Grant Ad Litem was the central issue conclusively determined by the Court, and that a review is not an appeal or a disguised opportunity to re-argue a case. The Respondent stated that the court already evaluated the grant annexed to the initial application and reached a factual and legal conclusion that the Applicant lacked capacity. Additionally, the Respondent stated that dissatisfaction with the court's reasoning did not constitute an error apparent on the face of the record, and that the alleged error was not a minor clerical slip but a fundamental jurisdictional defect that went to the root of the Applicant's standing.

6. According to the 1st Respondent, the court's finding was one of substance not form and therefore an attempt to cure this through a review application was procedurally improper, and stated that the proper cause, if any, would have been to first regularize her capacity before a succession court and then seek leave to file a fresh application, not to seek a review of a ruling that correctly identified a fatal flaw.

7. The Respondent also stated that the issuance of the Limited grant ad litem in the name of Willy Maina, Advocate was deliberate and not a typographical mistake, and that the Applicant and her counsel were fully aware, months before filing the initial application in July 2025, that the Grant they possessed was in the advocate's name. Therefore, the subsequent filing with the same defective Grant cannot be classified as an inadvertent error and urged the court to dismiss the application with costs.

APPLICANTS SUBMISSIONS

8. Counsel for the Applicant filed his submissions dated 6th February 2026, and identified the following issues for determination:
 - a) *Whether there exists an error apparent on the face of record to warrant a review.*
 - b) *Whether the mistake complained of is curable.*
 - c) *Whether the Applicant lacked capacity in substance.*
 - d) *Whether the interest of justice favour granting the orders sought.*
9. On the first issue, as to whether there exists an error apparent on the face of record to a warrant review counsel submitted that striking out of the appeal due to a documentary mismatch where the Limited Grant Ad Litem bore the advocate's name instead of the Applicant's was a clear clerical error. He further submitted that the mistake does not invite competing interpretations or the court to re-evaluate its reasoning, and relied on the cases of **National Bank of Kenya Ltd V Ndungu Njau [1997] eKLR** and

Muyodi V Industrial & Commercial Development Corporation & Another [2006] eKLR

10. On the second issue, as to whether the mistake complained of is curable, Mr. Maina submitted that the error was that of the advocate which should not result in the ultimate penalty of the case being struck out. Counsel further stated that the Applicant upon discovery of the error promptly placed the correct grant before court and relied on the cases of **Philip Chemwolo & Another V Augustine Kubende [1986] eKLR** and **Belinda Murai & Others V Amos Wainaina [1978] eKLR**.
11. On the third issue, as to whether the Applicant lacked capacity in substance, counsel submitted that the Applicant always had capacity and that the issue was merely defective proof of capacity caused by the wrong annexure of the grant ad litem. Mr. Maina argued that the 1st Respondent had full knowledge of her capacity as he had been served with the correct ad litem on 27th September, 2024 through his advocate, and relied on the case of **Microsoft Corporation V Mitsumi Computer Garage Ltd. & Another [2001] KLR 470**.
12. On the fourth issue, as to whether the interest of justice favour granting the orders sought, counsel relied on **Article 159(2)(d)** of the constitution and the Supreme Court case of **Nicholas Kiptoo Korir arap Salat V IEBC & 7 Others [2014] eKLR**, and submitted that if the orders sought are denied, the estate of Joseph Mundia would be permanently locked out of the

appellate process and the appeal will not be heard on merit and urged the court to allow the application as prayed.

RESPONDENT'S SUBMISSION

13. Counsel for the 1st Respondent filed submissions dated 9th March 2026, and identified the following issues for determination:

- a) Whether the Applicant has met the strict statutory criteria for review as mandatorily prescribed under Order 45 Rule 1 of the Civil Procedure Rules, 2010 and Section 80 of the Civil Procedure Act, Cap 21.*
- b) Whether the act of annexing a fundamentally defective Grant (issued to a third party) constitutes a "mistake or error apparent on the face of the record," or a clerical slip, or whether it is a substantive jurisdictional defect going to the root of the matter.*
- c) Whether the "new evidence" (the Grant in the Applicant's name) was discoverable with the exercise of due diligence prior to the Ruling of 2nd December 2025, and whether its omission can be sanitized through review.*
- d) Whether Article 159(2)(d) of the Constitution serves as a panacea for the Applicant's failure to adhere to fundamental, jurisdiction-defining rules of procedure, and whether granting this application would be in the interests of justice and finality.*

14. Counsel relied on the case of **Otieno, Ragot & Company Advocates V National Bank of Kenya Limited [2020] eKLR** and submitted that the Applicant's plea is forbidden, as the Applicant did not point to an error of the court but was asking the Court to overlook its own error, being the failure to file the correct document and to reverse its finding that she lacked capacity.
15. Mr. Kimunya, submitted that it was not an error in the Court's reasoning since the court saw the annexed Grant in the name of Willy Maina, and correctly applied the law to conclude the Applicant had no capacity, as the alleged error was the Applicant's failure to file the right document and relied on the case of **Nyamogo & Nyamogo V Kogo (2001) EA 174**, which cited with approval the case in **Republic V Independent Electoral and Boundaries Commission & another Ex-Parte Shem Odongo Ochuodho [2017] eKLR**. It was counsel's submission that the mistake in this case was the Applicant's and her advocate's and the Court cannot be said to have erred because it did not have clairvoyance to perceive a document that was never placed before it.
16. Counsel submitted that the Applicant wishes to introduce a Grant dated 11th September, 2024, which was in existence for over a year before the ruling was delivered, and argued that it was demonstrably within her knowledge and possession but she offered no explanation for failing to annex it to her initial application. Counsel cited the case of **Assets Recovery Agency V James Thuita Nderitu & 6 others [2020] eKLR**

17. Mr. Kimunya, submitted that the Applicant seeks to use a review to introduce a Grant obtained after the filing of the defective application, hoping that this Court will retrospectively validate the proceedings. Further, a suit filed without capacity is nullity ab initio and it cannot be cured by a subsequent event, or revived through the backdoor of review. Counsel stated that the only recourse, as this Court correctly noted in its ruling is to commence the process afresh and relied on the case of **Trouistik Union International & another V Mbeyu & another (Civil Appeal 145 of 1990) [1993] KECA 89 (KLR)**.
18. Counsel relied on Article 159(2)(d) of the Constitution and the case of **Wandi V Muchira (Petition (Application) E029 of 2024) [2025] KESC 40 (KLR)**, to cure the filing of an application and appeal by a person who, at the time of filing, held no grant whatsoever in her name. He further submitted that the application the Applicant seeks to save was filed in July 2025, whose proceedings were from their inception, initiated by a non-existent person in the eyes of the law.
19. Additionally, counsel stated that while the instant application for review was promptly filed, the underlying defect was known to the Applicant long before, as the Applicant had the correct Grant in September 2024 but chose to file a defective application in July 2025. It was his submission that the attempt to cure this through review cannot be used to prejudice the Respondent, and relied on the case of **Ruth Kwachimoi & another V Charles Nalika Cheloti & another [2021] eKLR**.

20. Counsel submitted that the balance of convenience tilts heavily in favour of the Respondent, as the Respondent has a live suit in the subordinate court (Molo CMELC E081 OF 2023) concerning recent acts of trespass and that the application will delay the hearing and determination of the case. Counsel stated that not allowing the application does not shut the Applicant out forever as she retains the right to file fresh and competent proceedings.

ANALYSIS AND DETERMINATION

21. The issue for determination is whether the orders of 2nd December, 2025 should be reviewed, varied and/or set aside. Whether the Applicant has met the threshold for review as provided for under Order 45 Rule 1(1) of the Civil Procedure Rules.
22. The jurisdiction of the court for review of orders is provided for under **Order 45 Rule 1 (1)** of the **Civil Procedure Rules** which provides as follows:
- “1. Application for review of decree or order***
(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.”

23. In the case of **National Bank of Kenya Ltd V Ndungu Njau [1997] eKLR, (Supra)**, the court held 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. It will not be a 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 proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

24. Similarly, in the Court of Appeal case of **Muyodi V Industrial and Commercial Development Corporation & Anor [2006] 1 EA 243** the court held as follows:

“In Nyamogo and Nyamogo V 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 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 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 apparent on the face of the record even though another view was also possible. Mere 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.”

25. This is a case where the Applicant had a Limited Grant ad Litem but erroneously attached the wrong one in the name of the Advocate. It is also admitted by counsel for the Respondent that the Applicant was indeed the Administrator of the Estate of her late husband Joseph W. Mundia even before filing this suit. Courts do not act mechanically or like robots and shut their eyes to what can be rectified by way of a review. It is trite 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, as per the **Nyamongo case** cited above. Courts must use judicial discretion to administer justice on the facts on a case-by-case basis.

26. An application for review must be filed without unreasonable delay, and the Applicant must show that there is sufficient reason, to warrant the court to grant an order of review. The Applicant must also establish that there was an error apparent on the face of the record. What constitutes sufficient reason in a review application was discussed in the Supreme Court of India in the case of **Ajit Kumar Rath vs State of Orisa & Others** 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” used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule”

27. It should also be noted that the power of review is available only when there is an error apparent on the face of the record or discovery of new and important matter and not merely because a party is unhappy with the

decision as was held in the case of **Pancras T. Swai v Kenya Breweries Ltd [2014] eKLR**.

28. This is a case where, if the review is not granted, it would lead to a miscarriage of justice, as the Applicant has shown sufficient reason that there was a mistake and error which led to the ruling that the Applicant had no capacity and yet she had a Limited grant in her name, which had been served on the Respondent's counsel which is admitted by counsel. It would be in the interest of justice to allow the application, and not to lock out the Applicant from the seat of justice for mistakes that can be corrected/rectified.
29. Having given due consideration to the application, the responses and submissions by counsel, I find that the application has merit and is hereby allowed as prayed.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH
DAY OF APRIL 2026.**

**M. A. ODENY
JUDGE**