



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. 74 OF 2019
IN THE MATTER THE ESTATE OF MARY AHERWA CHESONI
(DECEASED)

GEORGE MUBICHAKANI MALANGA..... 1st

OBJECTOR/APPLICANT

LINUS MASIKA MOLI 2ND

OBJECTOR/APPLICANT

JOHN WANYAMA SIMIYU 3RD

OBJECTOR/APPLICANT

PATRICK MAKOKHA WAFULA 4TH

OBJECTOR/APPLICANT

JOSEPH NABUTOLA MASINDE 6TH

OBJECTOR/APPLICANT

VERSUS

ATSANGO NANCY CHESONI 1ST

ADMINISTRATOR

MAUREEN INJETE CHESONI 2ND

ADMINISTRATOR

RULING

1. This ruling relates to the application dated **25th October, 2024** filed by the Applicants, George Mubichakani Malanga, Linus Masika Moli, John Wanyama Simiyu, Patrick Makokha Wafula and Joseph Nabutola Masinde; seeks for **ORDERS THAT:-**

1. Spent.

2. The grant of letters of administration issued by this honourable court on 21st June, 2019 and confirmed on 7th July, 2021 be and is hereby reviewed to include Tawai Limited as part of the estate of the deceased pursuant to the Ruling of Hon. Justice Mrima delivered on 3rd May, 2024.

3. This honourable court do find that the Applicants herein are bonafide beneficiaries of the estate of the Mary Aherwa Chesoni pursuant to the order of Hon Justice A.C Mrima issued on 3rd May, 2024.

4. This honourable court be pleased to find that the shares with respect to Tawai Limited be held by the Applicants herein in trust for all the shareholders awaiting the regularization of the company's directorship.

5. This honourable court does proceed to issue an amended grant and consequently an amended certificate of confirmation of grant.

6. The costs of the application be in cause.

2. The application is based on the grounds thereof and supported by affidavit sworn by George Mubichakani Malanga on **25th October, 2024**.
3. He avers *inter alia* that they are shareholders of Tawai Limited and are duly authorized by the rest of the shareholders to swear the affidavit on their behalf. He depones that the company was incorporated on **15th June, 1974** and that Justice Zacchaeus Chesoni and Mary Aherwa Chesoni subsequently sold shares in the company to various Applicants and shareholders. Annexed documents include a letter of authority dated **18th October, 2024** allegedly authorizing the deponent to act for the shareholders, a certificate of incorporation for Tawai Limited, several receipts purportedly evidencing purchase of shares and a certificate of title relating to **LR No. 5707** registered in the name of Tawai Limited.
4. He further avers that the company obtained a loan facility from Kenya National Capital Corporation secured against **LR No. 5707** and those shareholders contributed funds over time towards repayment of the loan and acquisition of shares. They rely on minutes of meetings held in October 1999 and several receipts allegedly issued between 1976 and 2007 to demonstrate shareholder participation and contributions to the company's affairs.
5. The application is opposed vide replying affidavit sworn by Nancy Atsango Chesoni on **25th November, 2024**.

6. She avers *inter alia* that the Administrators were lawfully issued with letters of administration on **26th July, 2019** without objection and contends that the present application is incompetent, time barred and brought by persons lacking locus standi to challenge the confirmed grant.
7. She avers that the Objectors have not demonstrated discovery of any new and important evidence capable of warranting review of the confirmed grant and therefore lack any lawful basis to interfere with the certificate of confirmation already issued by the court.
8. The Administrators further deny that the Objectors are or were shareholders of Tawai Limited and dispute the allegation that the late Mary Aherwa Chesoni or the late Justice Zacchaeus Chesoni sold shares in the company to the Applicants. It is deponed that the succession court lacks jurisdiction to determine disputes relating to company shareholding, sale of shares, subdivision of land or allocation of property allegedly owned by Tawai Limited.
9. The deponent similarly disclaims knowledge of the alleged loan obtained by Tawai Limited and denies that Mary Aherwa Chesoni relinquished any shares in the company as alleged by the Applicants. According to the Administrators, the Objectors are strangers to the ownership and management of Tawai Limited and cannot purport to assert rights over the company through succession proceedings.
10. In response to the Applicants' reliance on the ruling delivered by Hon. Justice A.C. Mrima, the Administrators

contend that the ruling merely directed that the shareholding of Tawai Limited revert to Mary Aherwa Chesoni and Justice Zacchaeus Chesoni personally, and not to their respective estates. They aver that implementation of the said orders lies with the registrar of companies, who is not a party to the succession proceedings.

11. The Administrators further maintain that, contrary to the Applicants' assertions, a limited liability company cannot itself form part of the estate of a deceased person and that only identifiable shares held by a deceased person may potentially devolve through succession. On that basis, they argue that the Applicants have improperly sought to convert a company dispute into a succession cause.
12. She concludes that the Objectors are neither beneficiaries of the estate of Mary Aherwa Chesoni nor beneficiaries of the estate of Justice Zacchaeus Chesoni and therefore lack capacity to seek review of the confirmed grant or make any claims within the succession proceedings.
13. The Administrators contend that the matters raised concerning Tawai Limited are distinct corporate disputes unrelated to administration of the deceased's estate and should not be litigated within the present succession cause. Notably, the replying affidavit does not annex documentary evidence disproving the Applicants' alleged shareholder interests, but instead principally raises objections grounded on jurisdiction, locus standi, limitation, and the legal distinction between corporate assets and estate property.

14. The Applicants have filed written submissions dated **21st October, 2025** and the respondents have filed written submissions dated **28th November, 2025**.

ANALYSIS AND DETERMINATION

15. I have read the application, the response thereto and the rival submissions as well as the cited authorities.
16. The application seeks review of the grant of letters of administration issued on **21st June, 2019** and confirmed on **7th July, 2021** so as to include Tawai Limited as part of the estate of the deceased and to recognize the Applicants as beneficiaries and trustees of shares allegedly held in the company.
17. The guiding principles on reviews were well settled in **CIVIL APPEAL NO. 2111 OF 1996, NATIONAL BANK OF KENYA VS NDUNGU NJAU**, where the Court of Appeal 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 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 proceed on an incorrect expansion of the law...”***
18. The Applicants principally rely on the ruling delivered by Hon. Justice A.C. Mrima on **3rd May, 2024** in **Kitale HCCC**

No. 22 of 2018, contending that the said decision established that the only lawful directors and shareholders of Tawai Limited were the late Mary Aherwa Chesoni and the late Justice Zacchaeus Chesoni, thereby necessitating amendment of the confirmed grant. The Applicants also rely on several annexures including receipts allegedly evidencing purchase of shares, minutes of shareholders' meetings, company documents and title documents relating to **LR No. 5707**.

19. The threshold for review under **Order 45 Rule 1** of the Civil Procedure Rules requires demonstration of discovery of new and important evidence which, despite due diligence, was not within the applicant's knowledge at the time of the decree or order, or proof of an error apparent on the face of the record, or other sufficient reason. A review is not intended to facilitate re-litigation of matters already determined or to enable parties advance a different interpretation of the law.
20. In the present matter, the Applicants have not demonstrated any error apparent on the face of the confirmed grant. The ruling of Hon. Justice Mrima did not expressly declare that Tawai Limited formed part of the estate of Mary Aherwa Chesoni nor did it determine that the Applicants were beneficiaries under the Law of Succession Act. Rather, the ruling addressed disputes concerning the lawful directorship and representation of the company in **KITALE HCCC NO. 22 OF 2018: TAWAI LIMITED VERSUS NATHAN WANJALA &**

5 OTHERS. The Applicants therefore seek to infer succession rights from a decision that primarily concerned corporate governance and the nullity of the alleged directors thereon.

21. Further, the annexures relied upon by the Applicants do not conclusively establish their entitlement either as shareholders or beneficiaries of the deceased's estate. The receipts annexed are largely informal, handwritten and unsupported by statutory company records such as share registers, annual returns, transfer instruments or resolutions evidencing lawful allotment or transfer of shares.
22. The minutes relied upon appear to have been internally generated and do not sufficiently demonstrate compliance with the Companies Act regarding succession of directorship or transmission of shares upon death.
23. Importantly, the certificate of title for **LR No. 5707** confirms ownership by Tawai Limited as a separate corporate entity and not by the deceased personally. In law, the assets of a limited liability company are distinct from the personal estate of its shareholders or directors, and only proven shares held by a deceased person may devolve through succession proceedings. The Applicants have not produced sufficient evidence demonstrating the precise shareholding of the deceased in Tawai Limited or that the company itself ought to be incorporated into the estate.
24. I agree with the Administrators that many of the issues raised by the Applicants, including alleged sale of shares,

validity of shareholding, corporate directorship and management of Tawai Limited, fall within the realm of company law disputes and not succession proceedings. The Applicants have also not established *locus standi* as beneficiaries of the estate of Mary Aherwa Chesoni so as to justify reopening a confirmed grant issued several years earlier.

25. Consequently, I find that the Applicants have failed to satisfy the legal requirements for review of the grant or amendment of the certificate of confirmation.
26. **Therefore, the application dated 25th October, 2024 is hereby dismissed for lack of merit.**
27. **Each party to bear its costs.**

**Dated signed and delivered via video link at Nairobi
this
7th day of May 2026.**

**H K CHEMITEI
JUDGE**