



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of Limo (Deceased) (Succession Cause 74 of 2001)
[2026] KEHC 5813 (KLR) (4 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 5813 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 74 OF 2001**

RN NYAKUNDI, J

MAY 4, 2026

IN THE MATTER OF THE ESTATE OF THE LATE CHELELGO ARAP LIMO (DECEASED)

BETWEEN

**WILLIAM KIPKOSGEI CHELELGO 1ST PETITIONER
ANDREW KIPTOO LIMO 2ND PETITIONER**

AND

**ISAYA TIROP LIMO 1ST BENEFICIARY
ALICE LIMO 2ND BENEFICIARY
MARTHA TERIKI LIMO 3RD BENEFICIARY
PENINAH JEPKEMBOI LIMO 4TH BENEFICIARY
ABISAAC LIMO 5TH BENEFICIARY
SAMSON KIBET LIMO 6TH BENEFICIARY
HENRY KIPKURUI LIMO 7TH BENEFICIARY
HILLARY KIPCHUMBA KIPKOECH Suing AS LEGAL REPRESENTATIVE OF
MOSES KIPKOECH LIMO) 8TH BENEFICIARY
ANNE LIMO Suing AS LEGAL REPRESENTATIVE OF SAMUEL KIMUTAI
LIMO) 9TH BENEFICIARY
DAVID KIBET LIMO 10TH BENEFICIARY
MARK KIPCHIRCHIR LIMO 11TH BENEFICIARY
REBECCA CHEBET Suing AS LEGAL REPRESENTATIVE OF JANE
JERUIYOT LIMO) 12TH BENEFICIARY**



LUCKY BIWOTT SUING AS LEGAL REPRESENTATIVE OF JAQUILINE
JEROTICH LIMO) 13TH BENEFICIARY

AND

ERICK KIPROGONG 1ST CREDITOR
SAMMY MUTAI 2ND CREDITOR
ESTHER MASAI 3RD CREDITOR
JENNIFER CHEPKURUI 4TH CREDITOR
JAMES KIMAIYO CHEROP 5TH CREDITOR
EMMANUEL K KIPROP 6TH CREDITOR
KIZITO CHESUNDO 7TH CREDITOR
JOSEPH CHEPKIRUI 8TH CREDITOR
SYLVESTER KIBOR 9TH CREDITOR
DAVID CHEROP 10TH CREDITOR
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MARY KIMOI KIMANYIM 12TH CREDITOR
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DANIEL KEMBOI 14TH CREDITOR
JACOB KIMARU 15TH CREDITOR
SAMUEL KIMUTAI KIBII 16TH CREDITOR
LUKA KIGEN 17TH CREDITOR
JOHN KIGEN 18TH CREDITOR
JONATHAN KIPLAGAT 19TH CREDITOR
BEATRICE SAWE 20TH CREDITOR
ROSE J MICAH 21ST CREDITOR
LUKE KIGEN 22ND CREDITOR
RUTH CHEBOI 23RD CREDITOR
SARAH JEMUTAI KIPTOO 24TH CREDITOR
DAVID CHEROP 25TH CREDITOR
PRISCILLAH CHEBOI 26TH CREDITOR
JEPKOECH KWAMBAI 27TH CREDITOR
ACK KAPTAGAT PARISH 28TH CREDITOR
BEATRICE CHERUIYOT SAWE 29TH CREDITOR



SAMMY MUTI CHUMA	30TH CREDITOR
EVALINE BALIAT	31ST CREDITOR
NANCY JEBITOK BIRIR	32ND CREDITOR
WILLIAM K KIPTOO	33RD CREDITOR
JOHN KIPROTICH KIGEN	34TH CREDITOR
ROSE J BIWOTT	35TH CREDITOR
LOISE J. ROTICH	36TH CREDITOR
EDWIN BIWOTT	37TH CREDITOR
ESTHER SAWE	38TH CREDITOR
RUTH J DANIEL	39TH CREDITOR
MELVIN JEPKOSGEI KIMAIYO	40TH CREDITOR
MARY JEMUTAI BWARE	41ST CREDITOR
GIDEON KIPKURUI KIMAIYO	42ND CREDITOR
ELDOR ET WATER & SANITATION COMPANY	43RD CREDITOR
IRENE CHEBET KIMUTAI	44TH CREDITOR

RULING

1. Before me for determination is summons dated 10th December, 2025 expressed under the provisions of Order 45 of the Civil Procedure Rules in which the Applicant seeks reliefs as follows:
 - a. Spent.
 - b. That pending the hearing and determination of this application, this Honourable Court be pleased to stay any dispositions of parcels of land forming part of the estate in accordance with the partial land forming part of the estate in accordance with the partial certificate of confirmation of grant emanating from the orders of the Honourable Court made on 6th October, 2025.
 - c. That the Honourable Court be pleased to vary and/or review its orders made on 6th October, 2025 in following terms;
 - i. To remove Andrew Kiptoo Limo and substitute him with David Kibet Limo to represent the 1st House as a Co-Administrator alongside William Kipkosgei Chelelgo, Isaiya Tirop Limo and Alice Jemutai Limo.
 - ii. LR No. 10919 totalling to 88.5997 Hectares to be divided equally among Andrew Limo, Henry Limo, Isaya Tirop Limo, Martha Teriki Limo, Samson Kibet Limo, Anne Limo, Abisaac Chelagat Limo, Alice Jemutai Limo and Penina Jepkemoi Limo.
 - iii. Strawbag shops to be shared out in equal shares as tenants in common by all beneficiaries and rental income shared out equally among the beneficiaries.



- iv. Strawbag plots totalling 0.805 Hectares to be distributed equally among Andrew Limo, Henry Limo, Isaya Tirop Limo, Martha Teriki Limo, Samson Kibet Limo, Anne Limo, Abisaac Chelagat Limo, Alice Jemutai Limo and Penina Jepkemoi Limo.
 - v. The premises previously occupied by Kapyego Wholesalers (no longer in existence) to form part of the shares in Kaplimo House in favour of all the beneficiaries.
 - vi. Hotel Plot (Plot No. 1061) to be hived from LR No. 10919 to also be shared out of all beneficiaries.
2. The summons is anchored on grounds that:
 - a. The Honourable Court issued orders herein making a partial certificate of confirmation of grant vide a judgment issued on 6th October, 2025.
 - b. That the Honourable Court also by error apparent on the record appointed one Andrew Kiptoo Limo to represent the first house whereas he comes from the 2nd house.
 - c. That the order made in partial distribution of the estate has revealed certain glaring anomalies which require that this Honourable Court interferes with its earlier orders to the extent sought herein.
 - d. That the said decision necessitates a review of which would fundamentally alter the orders made by this Honourable Court.
 - e. That it is manifestly clear that the alterations or review sought are fundamental and will require that the Honourable Court interfere with its earlier on inter alia distribution of the estate.
3. In response to the application, William Chelelgo swore a replying affidavit dated 11th February, 2026, jointly with Andrew Kiptoo Limo, as the 1st and 2nd Administrators of the estate of the late Chelelgo Arap Limo.
4. The deponents contended that the application was brought after delivery of Judgment upon Confirmation of Grant and amounted, in substance, to a review of that Judgment. They averred that the Court's jurisdiction to review is strictly circumscribed by Order 45 of the Civil Procedure Rules, 2010, and is limited to well-defined grounds recognised in law.
5. They further averred that the Judgment upon Confirmation of Grant delivered on 6th October, 2025, conclusively determined the distribution of the estate and the rights of all beneficiaries, rendering the Court functus officio in respect of those matters. The present application, they contended, sought to reopen, vary, or re-litigate issues already adjudicated, and therefore fell outside the permissible scope of review.
6. On the question of administration, the deponents pointed out that the Applicants had, during the confirmation proceedings, sought the removal of the 1st and 2nd Administrators, a prayer the Court carefully evaluated and declined, instead exercising its discretion to appoint additional Administrators. They further noted that the person now belatedly proposed as Administrator had previously been proposed by the 8th Beneficiary and was expressly considered and rejected by the Court. The attempt to revisit that determination through the guise of review was therefore, in their submission, plainly impermissible.
7. On the specific grounds raised, the deponents averred that all issues, including the Kapyego Wholesalers and Premises (found to be a gift inter vivos), LR No. 10919, the Strawbag Centre plots, and Plot No. 57 (the dam) were squarely before the Court during the confirmation proceedings and



were conclusively determined after full hearing. They maintained that dissatisfaction with the outcome of those determinations constitutes grounds for appeal, not review.

8. The deponents drew the Court's attention to the selective and disingenuous nature of the application. They pointed out that the Applicants targeted only certain parcels of the estate while leaving untouched other distributions made by the Court, including the Chepkorio Market Centre plot gifted to Alice Jemutai Limo, a finding that the 2nd Applicant conspicuously did not challenge. They submitted that a party aggrieved by a Judgment must either accept it in its entirety or pursue an appeal. That review cannot be deployed as a piecemeal mechanism to rewrite a final decision to suit one party's preferences. They further highlighted that the Applicants' proposed redistribution would, among other injustices, reduce Anne Limo's allocation from 36 acres to 23 acres, in direct derogation of the gift inter vivos made by the deceased to her late husband, thereby occasioning manifest injustice
9. The deponents further disclosed that following the Judgment, the family had unanimously resolved to incorporate Chelelgoi Realtor Group Limited as the vehicle for implementing the Court-ordered distribution of the commercial properties, and that all beneficiaries including the Applicants had been allotted shares therein. They contended that the Applicants had come to Court seeking review while consciously concealing their participation in and benefit from these post-judgment arrangements, in breach of their duty of candour.
10. Further, the deponents averred that the 2nd Applicant, Alice Jemutai Limo, had caused restrictions to be registered against the titles of the said commercial properties, effectively freezing the registers and preventing the processing of fresh leases, notwithstanding that the previous leasehold tenure had lapsed. They warned that this exposed the properties to the risk of reversion to the government and gravely imperilled the beneficiaries' proprietary interests, conduct wholly inconsistent with the duty of every personal representative to preserve rather than dissipate the estate.
11. On record, I have the Respondents' written submissions dated 27th February, 2026 in which learned counsel Ms. Chesoo submitted on the various elements essential to the success of an application for review. Citing a number of authorities, it is submitted for the Respondents that the instant application does not disclose any grounds for review and ought to be dismissed in its entirety with costs. Counsel maintained that the Court is functus officio and the issues raised by the Applicant are candidates for an appeal and not review.

Analysis and determination

12. It is now settled law that a Court of record has both statutory and inherent jurisdiction to review its own orders and judgments within defined and circumscribed limits. The jurisdiction to review is not equivalent to an appellate jurisdiction. It does not permit a party who is merely dissatisfied with the outcome of proceedings to seek a fresh determination of the same issues before the same Court on the same facts.
13. The statutory basis for review in civil proceedings is Order 45 Rule 1 of the Civil Procedure Rules, 2010, which provides that:
 - “(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”

14. Kuloba J (as he then was) in *Lakesteel Supplies v Dr. Badia and Anor Kisumu* [HCCC No. 191 of 1994] opined that:

“The exercise of review entails a judicial re-examination, that is to say, a reconsideration, and a second view or examination, and a consideration for purposes of correction of a decree or order on a former occasion. And one procures such examination and correction, alteration or reversal of a former position for any of the reasons set out above. The Court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in Order 44 rule 1, of the Civil Procedure Rules. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. It can only lie if one of the grounds is shown, one cannot elaborately go into evidence again and then reverse the decree or order as that would be acting without jurisdiction, and to be sitting in appeal. The object is not to enable a judge to rewrite a second judgement or ruling because the first one is wrong...On an application for review, the Court is to see whether any evident error or omission needs correction or is otherwise a requisite for ends of justice. The power, which inheres in every Court of plenary jurisdiction, is exercised to prevent miscarriage of justice or to correct grave and palpable errors. It is a discretionary power. In the present application it has not been said or even suggested that after the passing of the order sought to be reviewed, there is a discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the Applicant’s knowledge or could not be produced by him at the time when the ruling was made.”

15. The jurisdiction of the Court to review its own decisions under Order 45 of the Civil Procedure Rules is narrow and carefully circumscribed. A party invoking that jurisdiction must bring itself within one of three recognised grounds: the discovery of new and important matter or evidence which, despite the exercise of due diligence, was not within the Applicant’s reach at the time of the decision; an error or mistake apparent on the face of the record; or such other sufficient cause as the law recognises. The Court of Appeal underscored the restrictive nature of this jurisdiction in *National Bank of Kenya Limited v Ndung’u Njeru* [2008] 1 KLR 252, where it stated 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 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.”

16. Applying those principles to the facts in the present application, the Court is called upon to examine whether the Applicants have brought themselves within any of the recognised grounds for review. The application advances, broadly, three categories of complaint. The composition of the administration, the distribution of specific assets including LR No. 10919, the Strawbag Centre plots and the Kapyego Wholesalers premises and the proposed redistribution of the dam plot.
17. On the question of administration, the Applicants contend that the appointment of Andrew Kiptoo Limo to represent the 1st House constitutes an error apparent on the face of the record, he being, as they assert, a member of the 2nd House. The Court has carefully examined that contention against the record of the proceedings and is not persuaded. The composition of the administration was not a matter that escaped this Court’s attention, it was specifically addressed during the confirmation proceedings, where this Court, having evaluated the competing positions of all parties, declined to disturb the existing administrative arrangement and instead exercised its discretion to appoint additional Administrators. That was a considered judicial determination. It is further noteworthy that the person now proposed as a replacement had earlier been proposed by the 8th Beneficiary and was expressly considered and rejected by the Court. An error apparent on the face of the record must be self-evident and capable of being demonstrated without elaborate argument. What the Applicants characterise as an error is, in truth, a challenge to the correctness of a judicial exercise of discretion, a matter that properly rests in appeal, and not review.
18. Turning to the substantive distribution issues, the Applicants seek a redistribution of LR No. 10919, the Strawbag Centre plots and shops, and the premises previously occupied by Kapyego Wholesalers. Each of these issues was fully canvassed before this Court during the confirmation proceedings. With respect to the Kapyego Wholesalers premises in particular, the Court made a specific finding, upon documentary evidence produced by the 1st Administrator, that the deceased had gifted the entire premises to him during his lifetime by instrument dated 14th March, 1985, and awarded it accordingly as a gift inter vivos. Similarly, the Strawbag Centre plots were found to have been individually allocated by the deceased to identified beneficiaries, many of whom have been in possession, occupation and development of those properties for decades. The Court confirmed those allocations in its Judgment. To now invite the Court to redistribute those assets equally among a wider pool of beneficiaries is not to correct an error apparent on the face of the record. It is to ask the Court to reconsider and reverse its own findings of fact. That is precisely what the jurisdiction of review does not permit.
19. The Applicants have equally not demonstrated the discovery of any new and important matter or evidence which, despite the exercise of due diligence, was unavailable to them at the time of the Judgment. All the factual contentions now advanced were, or could with reasonable diligence have been, placed before the Court at the confirmation stage. The Applicants participated fully in those proceedings, filed affidavits, made submissions, and were afforded every opportunity to advance their position. Having done so and obtained an outcome with which they are dissatisfied, they cannot invoke the review jurisdiction as a second bite at the cherry.
20. The Applicants challenge certain distributions that are unfavourable to them while leaving entirely untouched other determinations of this Court, including the inter vivos gift of the Chepkorio Market Centre plot affirmed in favour of Alice Jemutai Limo. A party aggrieved by a judgment must either accept it in its entirety or challenge it on appeal. Review cannot be deployed as a piecemeal instrument to surgically excise only those portions of a judgment that are inconvenient to the Applicant while preserving the rest.



21. Taking the application as a whole, the Court finds that the grievances advanced by the Applicants go, without exception, to the merits and correctness of the Judgment delivered on 6th October, 2025, and the exercise of judicial discretion therein. They do not disclose any error apparent on the face of the record, the discovery of new and material evidence, or any other sufficient cause recognised in law. They are, in substance, grounds of appeal dressed in the language of review.
22. In the premises, the Court finds that the application dated 10th December, 2025 is devoid of merit and amounts to a misapplication of this Court's limited review jurisdiction. The same is hereby dismissed with costs to the 1st and 2nd Petitioners.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 4TH MAY 2026

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R. NYAKUNDI

JUDGE

