



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of Jonah Kipkoskei Chumo (Deceased) (Succession Cause
145 of 2010) [2025] KEHC 1235 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1235 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
SUCCESSION CAUSE 145 OF 2010
JK SERGON, J
FEBRUARY 26, 2025
IN THE MATTER OF THE ESTATE OF THE
LATE JONAH KIPKOSKEI CHUMO (DECEASED)**

BETWEEN

SUMMARY CHUMO 1ST PETITIONER

RAELI CHUMO 2ND PETITIONER

AND

JENNIFER CHEBII KIMETTO OBJECTOR

RULING

1. The application coming up for determination is a summons dated 13th October, 2024 seeking the following orders;
 - (i) Spent.
 - (ii) That the court be pleased to review and/or set aside the orders dated 9th October, 2024.
 - (iii) That the grant of letter of administration issued to Jeniffer Chebii Kimetto be reinstated.
 - (iv) That the cost of this application be provided for.
2. The application is supported by the grounds on the face of it and the supporting affidavit of Jeniffer Chebii Chumo the Objector/Applicant.
3. The Applicant avers that on 25.10.2023, the 1st and 2nd Petitioners filed an application seeking to revoke the grant of letters of administration issued to her by the court on the basis that she was adjudged bankrupt vide Nairobi Bankruptcy Cause No. 46 of 2004.



4. The Applicant avers that she learnt through the ruling delivered by the court on 9.10.2024 that the Petitioners' application proceeded ex parte and without the benefit of her response contrary to the information from her former advocates W.K Ngenoh Lessan & Co. Advocates that they filed her response to the said application.
5. The Applicant avers that on 29.7.2024, the High Court in Nairobi issued an order lifting and/or discharging her from bankruptcy proceedings and that owing to the said excusable mistake or negligence of her former advocates W.K Ngenoh Lessan & Co. Advocates, the orders from Justice A. Mabeya were never brought to the attention of the Court.
6. The Applicant avers that the orders issued on 29.7.2024 by Justice A. Mabeya are therefore new, important and critical evidence that may assist this Court to review its decision rendered on 9.10.2024. The Applicant further avers that the mistake and/or negligence of her former advocates should not be visited upon her and that the application for review is timely and was made without undue delay.
7. Raeli Chepngetich Chumo the 2nd Petitioner filed a replying affidavit in response to the application, she set out the chronology of events in the instant succession cause.
8. The 2nd Petitioner avers that the court in its own motion appointed her, her co-petitioner and the objector as joint administrators of the estate of the deceased person vide an order made on 23.5.2023 and that vide an application dated 25.10.2023 the Petitioners challenged the appointment of the Objector as a joint administrator of the estate on grounds that at the time of her appointment she had been adjudged bankrupt and that she was not a beneficiary and/or dependant of the estate of the deceased.
9. The 2nd Petitioner avers that the objector did not oppose the application dated 25.10.2023 and therefore this court in its ruling dated 9.10.2024, revoked the grant of representation issued on 23.5.2023 and appointed the petitioners as joint administrators of the estate.
10. The 2nd Petitioner avers that the failure to file a response by his former advocate was not a mistake but negligence on the part of the advocate and that the objector ought to pursue the same in a different forum.
11. The 2nd Petitioner avers that the application for review does not fit within the provisions of section 80 of the *Civil Procedure Act* and order 45 (1) (b) of the *Civil Procedure Rules*. The 2nd Petitioner was adamant that the discharge order issued in Nairobi Bankruptcy Cause No. 46 of 2004 on 29.7.2024 does not amount to discovery of new evidence as the contention in the application dated 25.10.2023 which is the subject of the ruling of this court dated 9.10.2024 was that at 23.5.2023 when the order of appointing the objector as a co administrator was made, she was not qualified to be appointed as such because she was an adjudged bankrupt. It is therefore immaterial now that she has been discharged from being bankrupt.
12. The 2nd Petitioner avers that the objector is not a spouse, beneficiary or public trustee or a creditor thereby warranting her appointment as an administrator of the estate and cited the provision of section 66 of the *Law of Succession Act*.
13. The 2nd Petitioner avers that the objector will have a chance to prove her case and if she is a beneficiary and/or dependent of the deceased, will be afforded the chance to file a protest which will be heard and determined.
14. This court directed the parties to canvass the application via written submissions. At the time of writing this ruling, the Objector/Applicant had not uploaded her submissions on the Case Tracking System.



15. The Petitioners filed their submissions where they reiterated the grounds of review as set out in order 45 of the Civil Procedure Rules as follows;

“ 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. They cited the case of *Tokesi Mambili & Others v Simion Litsanga Sabwa* (Civil Appeal 90 of 2001 – Kisumu) where the Court of Appeal stated

“ Hence in order to obtain a review an applicant has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the order to be reviewed was made. An applicant may have to show that there was a mistake or error apparent on the face of the record or for any other sufficient reason.”

16. The Petitioners maintained that the discharge order issued in Nairobi Bankruptcy Cause No. 46 of 2004 on 29.7.2024 does not amount to discovery of new evidence or an error on the face of record as the contention in the application dated 25.10.2023 which is the subject of the ruling of this court dated 9.10.2024 was that at 23.5.2023 when the order of appointing the objector as a co administrator was made, she was not qualified to be appointed as such because she was an adjudged bankrupt.
17. The Petitioners contended that there is no sufficient reason as to why the ruling should be reviewed, that the objector is not a spouse, beneficiary or public trustee or a creditor thereby warranting her appointment as an administrator of the estate and cited the provision of section 66 of the Law of Succession Act.
18. I have considered the application and submissions by parties and I find that the issue (s) for determination are whether to review the ruling of this court dated 9.10.2024 and thereby reinstate the grant of letters of administration to Jeniffer Chebii Kimetto.
19. On the issue as to whether to review the ruling of this court dated 9.10.2024, on account of the discovery of a new and important matter to wit the discharge order issued in Nairobi Bankruptcy Cause No. 46 of 2004 on 29.7.2024 which was not within the purview of this court at the time when the decree was passed and/or the order made, the objector/ applicant has offered a plausible explanation for this, the application dated 25.10.2023 subject of the impugned ruling proceeded ex parte and without the benefit of her response contrary to the information from her former advocates W.K Ngenoh Lessan & Co. Advocates that they filed her response to the said application and therefore this court was not privy to the discharge orders in her favour at the time it delivered its ruling. In the circumstances, this



court finds that the mistake and/or negligence of her former advocates should not be visited upon her and in any event the application for review is timely and was made without undue delay.

20. Consequently, the summons dated 13th October, 2024 is hereby allowed and this court hereby reinstates the grant of letters of administration to Jennifer Chebii Kimetto (the Objector/Applicant) herein. The cost of this application be in the cause.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 26TH DAY OF FEBRUARY, 2025.

J.K. SERGON

JUDGE

In the Presence of:-

C/Assistant – Rutoh

Kiletyen for the Applicant

Langat for the Administrators

