



**In re Estate of Mohamud Toloï Kassim (Deceased) (Succession Cause 206 of 2011) [2025] KEHC 3189 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3189 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 206 OF 2011  
S MBUNGI, J  
FEBRUARY 26, 2025**

**IN THE MATTER OF THE ESTATE OF MOHAMUD TOLOI KASSIM (DECEASED)**

**BETWEEN**

**ASMAN MATSUKHU TOLOI ..... APPLICANT**

**AND**

**BAKARI WESONGA KASSIM ..... 1<sup>ST</sup> OBJECTOR**

**RAMATHAN MABIALE KASSIM ..... 2<sup>ND</sup> OBJECTOR**

**FARIJAH MABIALE MURENGA (ON BEHALF OF THE ESTATE OF AROSE AKHUSAMA KASSIM) ..... 3<sup>RD</sup> OBJECTOR**

**HASSAN MURENGA KASSIM ..... 4<sup>TH</sup> OBJECTOR**

**RULING**

1. This is a ruling on a notice of motion dated 25<sup>th</sup> September, 2024 brought by Applicant under Section 1 A, 1B,3A,3B and Section 99 of the *Civil Procedure Act* Cap 21 of the Laws of Kenya and Order 51 Rule 1 Civil Procedure Rules 2010 seeking for the following orders.
  - i. That this Honourable court be pleased to review the judgment dated 18<sup>th</sup> September, 2024 having been issued irregularly .
  - ii. That this honourable court be pleased to correct both errors on record and in facts in the Judgment dated 18<sup>th</sup> September, 2024.
  - iii. That all property Koyonzo Plot No.3, Shibale Plots No. 7 & 10 and Plot No. 10 formerly land parcel No. S. Wanga/Lureko/1481 be declared the property of the estate of Mohamud Toloï Kassim.



2. The Application is supported by the grounds on its face and by the supporting affidavit sworn by the Applicant on 25<sup>th</sup> September, 2024 and a further affidavit sworn on 25<sup>th</sup> October, 2024.
3. The Application is opposed by the 4<sup>th</sup> Respondent via a replying affidavit sworn on 14<sup>th</sup> October, 2024.
4. I have looked at the pleadings, the issue for determination is where the Applicant has made a case to make this court review the Judgment dated 18<sup>th</sup> September, 2024.
5. The cited provisions in Civil Procedure Act 1A,1B,3B generally provide for inherent power of the court to make any order to meet the ends of Justice.
6. Section 99 of the Civil Procedure Act provides
 

Clerical or arithmetical mistakes in judgments, decrees or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court either of its own motion or on the application of any of the parties.
7. I have looked at the judgment dated 18.9.2024 there were no clerical or arithmetic issues involved.
8. The jurisdiction to review a Judgment or an order is conferred by Order 45 of the Civil Procedure Rules which provides:-
  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.
9. The main issue which triggered the Applicant to file this Application is that he disagreed with this court's interpretation of the Judgment rendered by Environment and Land Court in ELC 149 of 2016 (OS) in Busia. The interpretation of the Judgment by this court was a merit based decision which means that the only option available to the Applicant was to Appeal against the Judgment of this court dated 18.9.2024, for a perceived wrong interpretation by a court of any matter before it is not one of the grounds contemplated by the provisions of Order 45.
10. The other way round was for the Applicant to seek clarification/interpretation of the import of the Judgment in Busia ELC Case No. 149 of 2016 (OS) from the Honourable Judge who rendered the Judgment if in event the clarification/interpretation contradicts the interpretation of this court then the Applicant can file an Application for review of this court's Judgment on that ground.



11. The upshot of this is that I find the Application has no merit and it is hereby dismissed .
12. Costs in cause.
13. Right of Appeal 30 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**S.N MBUNGI**

**JUDGE**

In the presence of :

Petitioners/Applicants – Present

Protestors/Objectors– present

Court Assistant – Elizabeth Angong'a

Mr. Magotsi for the Applicant present online .

Mr. Makhoha for the Respondents absent.

Mr. Magotsi, I seek for a mention date for further directions , I also seek for a copy of the ruling.

Court, Mention on 12.6.2025 for further directions.

A copy of typed ruling be availed to Mr. Magotsi upon payment of the requisite fees.

