



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Jakinda Samwel Oballa (Deceased) (Family Appeal E003 of 2023) [2025] KEHC 7236 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7236 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
FAMILY APPEAL E003 OF 2023**

**DK KEMEL, J**

**MAY 30, 2025**

**IN THE MATTER OF THE ESTATE OF JAKINDA SAMWEL OBALLA(DECEASED)**

**BETWEEN**

**GEOFFREY OCHIENG OBALLA ..... APPLICANT**

**AND**

**DINNAH ADOYO OBALLA ..... 1<sup>ST</sup> RESPONDENT**

**BENJAMIN ODERO OBALLA ..... 2<sup>ND</sup> RESPONDENT**

**JANE ATIENO OBALLA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Objector/Applicant has filed a Notice of motion dated 22<sup>nd</sup> January 2024 wherein he sought for the following orders:
  1. That the order made on 15/11/2023 be reviewed as follows:
    - a. That all the public entries and records undertaken by the Respondents before or on account of the Certificate of Confirmation of Grant issued on 26<sup>th</sup> July herein with regard to illegal change of proprietorship of the suit properties/mother parcel number North/Sakwa/Nyawita/833, Uyoma/Kokwiri/4194 and North Sakwa/Ajigo/460 be and are hereby declared null and void ab initio.
    - b. That all the titles of LR Numbers North Sakwa/Nyawita/2260, North Sakwa/Nyawita/2261, Uyoma/Kokwiri 4355, Uyoma/ Kokwiri/4356, North Sakwa/Ajigo/2406 and North Sakwa/Ajigo/2407 be cancelled and ownership of the same to revert to the Mother Parcel Number North Sakwa/Nyawita/833, Uyoma Kokwiri/4194 and North Sakwa/Ajigo/460 and to the name of the deceased person herein respectively for purpose of distribution of the estate.



2. That the costs of this application be provided for.
2. The application is supported by the grounds set out thereunder and by the supporting affidavit of the Applicant sworn on even date. The Applicant's gravamen is inter alia; that the order made on 15/11/2023 has errors on the face of the record arising from a mistake where Title Deeds Number North Sakwa/Nyawita/833, Uyoma/Kokwiri/4194 and North Sakwa/Ajigo/460 being the mother Titles were not specifically mentioned in prayer 4 in the Summons for Rectification of Grant dated 4/5/2023 ; that the inadvertent omission to state the specific mother titles in the said summons render the order made on 15/11/2023 incapable of enforcement or execution; that the said Order further has errors on the face of the Record in so far as it refers to Parcels Number North/Sakwa/Nyawita/2406, and North Sakwa/Nyawita/2407 instead of parcels North Sakwa/Nyawita/2406 and North Sakwa/Nyawita 2407 which was subdivided from the mother Parcel North/Sakwa/Ajigo/460; that the said errors on the face of the record arose from inadvertent mistakes which should not be visited upon the Objector/Applicant; that the Administrators/Respondents shall suffer no prejudice upon the application being granted.
3. The Respondents vehemently opposed the application and filed a response wherein they averred inter alia; that the Objector/Applicant has come to court with unclean hands because he had colluded with his brother Daudi Omondi Oballa and fraudulently sold land Parcel North Sakwa/Ajigo/2406; that pursuant to the sale aforesaid new titles were issued namely North Sakwa /Ajigo/3559 and 3560; that the Objector/Applicant together with his brother had intentions to disinherit the 1<sup>st</sup> Administrator/Respondent who was the deceased's widow without children; that the Applicant sole aim is to disinherit everyone; that the deceased had already distributed his property to all the houses and beneficiaries; that the Respondents have managed the properties well but the Applicant is out to disrupt everything; that property North Sakwa/Nyawita/2260 was leased to Safaricom Limited on 15/10/2015 but the Applicant placed a caution leading to nonpayment of rent; that the application is an afterthought and should be dismissed.
4. An interested party by the name of Moses Martin Okello Odiyo swore an affidavit on 10/12/2024 wherein he averred inter alia; that the administrators were initially represented by the firm of Mwangambo & Okonjo Advocates in the mater, that the said firm never attended court and were never represented when the order of revocation of grant was issued on 15/11/2023; that they had a right to be heard but every time the matter came up before court advocate told them that he was going to attend court and that their attendance was not necessary; that he was shocked that the grant was revoked and yet he was never granted a hearing; that he who come to equity must come with clean hands, he colluded with his brother Daudi Omondi Oballa fraudulently sold the land title No North Sakwa/Agijo/2406 pretending that the deceased administrator Dinnah Adoyo Oballa is the one who sold it; that the title deed was even on to sell part of the property to another party (attached herewith and marked MO-1 is a copy of the search); that the property being part of the land Title No North Sakwa/Ajigo.2406 which was sold by the Applicant together with his said brother is now fenced off as per the annexed copy of search; that the property in question namely Land Title No North Sakwa/Ajigo/2406 was sub-divided and North Sakwa/Ajigo/3559 and 3560 issued, it had however been given to Dinnah Adoyo Oballa by the deceased husband Jakinda Samwel Oballa ; that the property namely North Sakwa/Ajigo/2406 was sold to him by the 1<sup>st</sup> Administrator to use the sale proceeds for medication; that the property is not available for distribution and cannot be cancelled; that the case leading to the cancellation of titles was carried out without his knowledge and that he was not notified so that he could defend himself; that the Application by the Applicant is an afterthought; that the titles can only be cancelled after he has been given an opportunity for a hearing.



5. The Applicant filed a further affidavit sworn on 7/3/2025 wherein he averred inter alia; that the Interested Party is improperly participating in this matter without the requisite leave of the court; that the alleged gift of Parcel No North Sakwa/Ajigo/460 to the 1<sup>st</sup> Administrator by the deceased is not correct; that the said 1<sup>st</sup> Administrator who died of Cancer lacked the mental capacity to voluntarily dispose of the parcel of land to the Interested Party; that the sale of parcel 460 by the 1<sup>st</sup> Administrator was done before completion of the Succession case; that the Administrators abetted the said sale of land to the Interested Party; that the 1<sup>st</sup> Administrator was allocated parcel No North Sakwa Ajigo/3542 which he sold to one Evans Obudho Oywer; that the administrators have been disposing of parcels of land without authority.
6. The application was canvassed by way of written submissions. Both parties complied.
7. The Appellant raised two issues for determination namely;
  - i) Whether due to inadvertent mistake, there are errors on the face of the Order made on 15/11/2023 insofar as Title Deed Numbers LR Nos. North Sakwa/Nyawita/833, North Sakwa/Ajigo/460, Uyoma/Kokwiri/4194, North Sakwa/Nyawita/2406 and North Sakwa/Nyawita/2407 instead of Parcel Numbers North Sakwa/Ajigo/2406 and North Sakwa/Ajigo/2407 which were subdivided from LR No North Sakwa/Ajigo/460. were not specifically mentioned in prayer 4 in the Summons for Revocation of Grant dated 4<sup>th</sup> May, 2023.
  - ii. Whether the inadvertent omission or mistake renders the Order made on 15/11/2023 incapable of enforcement or execution.
8. Learned counsel in his submissions gave the history of the matter which was as follows: In/about the year 2001, the 3<sup>rd</sup> Administrator; Jane Atieno Oballa, illegally subdivided the mother parcel No North Sakwa/Nyawita/833 into two (2) portions known as LR No North Sakwa/Nyawita/2260 and North Sakwa/Nyawita/2261 which were transferred and registered in her own name. In or about April, 2016, the said 3<sup>rd</sup> Administrator licensed Safaricom Limited PLC to construct a Booster in the subdivided portion; LR No North Sakwa/Nyawita/2260 from which she collects rental income from the said Third Party.  
 The said 3<sup>rd</sup> Administrator illegally subdivided LR No Uyoma/Kokwiri/4194 into two (2) portions; LR No Uyoma/Kokwiri/4355 and Uyoma/Kokwiri/4356 without disclosing the same in the Succession Cause and unlawfully sold one portion thereof to a Third Party.  
 Subsequently on the 4<sup>th</sup> day of August, 2010, the 1<sup>st</sup> Administrator; Dinnah Adoyo Oballa illegally transferred Land Parcel No North Sakwa/Ajigo/460 to her own name without disclosing the same in the Succession Cause; and further subdivided the same into 2 portions; North Sakwa/Ajigo/2406 and North Sakwa/Ajigo/2407.  
 The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Administrators colluded with Third Parties who illegally took possession of LR Nos. North Sakwa/Nyawita/883, North Sakwa/Ajigo/460, Uyoma/Kokwiri/4194 and North Sakwa/Ajigo/1041 occupied by one Elly Randiga Oluoch yet it is still registered in the name of Jakinda Samwel Oballa [the Deceased Person herein].  
 The Administrators herein have jointly and severally failed to proceed diligently with the administration of the Estate to its logical conclusion as stipulated by law.
9. The Order made on 15<sup>th</sup> November 2023 had the following errors apparent on the face of the record;



- I. The Order made on 15<sup>th</sup> November, 2023 has errors on the face of the record arising from a mistake whereby Title Deeds Numbers North Sakwa/Nyawita/833, Uyoma/Kokwiri/4194 and North Sakwa/Ajigo/460 being the Mother Titles were not specifically mentioned in prayer 4 in the Summons for Rectification of Grant dated 4<sup>th</sup> May, 2023.
- II. The inadvertent omission to state the specific Mother Titles in the said Summons renders the Order made on 15<sup>th</sup> November, 2023 incapable of enforcement or execution.
- III. The said Order further has errors on the face of the Record insofar as it refers to Parcels Numbers North Sakwa/ Nyawita /2406 and North Sakwa/Nyawita /2407 instead of parcels North Sakwa /Ajigo /2406, North Sakwa/Ajigo /2407 which were subdivided from the Mother Parcel North Sakwa/Ajigo/460.

Learned counsel submitted that revision is found in Section 80 of the [Civil Procedure Act](#) which provides as follows:

“ Any person who considers himself aggrieved.....

- a. By a Decree or Order from which an Appeal is allowed by this Act but from which no Appeal has been preferred; or
- b. By a Decree or Order from which no Appeal is allowed by this Act,  
May apply for a review Judgement to the Court which passed the Decree or made the Order and the court may make such Order thereon as it thinks fit.”

Order 45 Rule 1 stipulates similar provisions for Review and further sets the following parameters that circumscribe an Application for Review as follows; -

- a. Discovery of new and important matter or evidence which alter the exercise of Due Diligence, was not within the Applicant’s knowledge or could not be produced by him at the time when the Decree was passed or the Order made; or
- b. On account of some mistake or error apparent on the face of the record; or
- c. For any other sufficient reason.

Rule 73 of the [Probate and Administration Rules](#) provides for the inherent powers of court as follows; -

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the Process of Court.”

Rule 63 (i) provides for the application of Civil Procedure of [Civil Procedure Rules](#) and the High Court (Practice and procedure) Rules as follows; -

“save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX together with the High Court Practice and Procedure/Rules shall apply so far as relevant to procedures under these Rules.



Section 76 of the *Law of Succession Act* [Chapter 160 of the Laws of Kenya] stipulates that; -

‘a Grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on Application by any interested party or of its own motion.....

- a. ....
- b. That the grant was obtained fraudulently by making of a false statement or by the concealment from the court of something material to the case;-
- c. ....
- d. That the person to whom the Grant was made has failed, after due notice and without reasonable cause either.....
  - i. ....
  - ii. To proceed diligently with the administration of the estate; or
  - iii. To produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of Section 83 or has produced any such inventory or account which is false in any material particular; or
  - iv. ....

Section 83 of the Act provides that

‘personal representatives shall have the following duties;-

- a. ....
- b. To get in all free property of the deceased, including debts owing to him and moneys payable to his personal representatives by reason of his death;
- c. ....
- d. ....
- e. Within Six (6) months from the date of the Grant, to produce to the court a full and accurate inventory of the assets and liabilities of the deceased and a full and accurate account of all dealings therewith up to the date of the account;
- f. Subject to Section 55, to distribute or to retain on trust (as the case may require) all assets remaining after payment of expenses and debts as provided by the preceding paragraphs of this Section and the income therefrom according to the respective beneficial interest therein under the will or on intestacy as the case may be;



- g. Within Six (6) months from the date of confirmation of the Grant, or such longer period as the court may allow, to complete the administration of the Estate in respect of all matters other than continuing trusts and to produce to the court a full and accurate account of the completed administration.”

It was submitted that in the instant matter, the Applicant made an inadvertent error or mistake in the Summons and Supporting Affidavit dated 4<sup>th</sup> May 2023 that resulted in errors apparent on the face of the record as follows: -

- i. The Order made on 15<sup>th</sup> November, 2023 has errors on the face of the record arising from a mistake whereby Title Deeds Numbers North Sakwa/Nyawita/833, Uyoma/Kokwiri/4194 and North Sakwa/Ajigo/460 being the Mother Titles were not specifically mentioned in prayer 4 in the Summons for Rectification of Grant dated 4<sup>th</sup> May, 2023.
- ii. The inadvertent omission to state the specific Mother Titles in the said Summons renders the Order made on 15<sup>th</sup> November, 2023 incapable of enforcement or execution.
- iii. The said Order further has errors on the face of the Record insofar as it refers to Parcels Numbers North Sakwa/ Nyawita /2406 and North Sakwa/Nyawita /2407 instead of parcels North Sakwa /Ajigo /2406, North Sakwa/Ajigo /2407 which were subdivided from the Mother Parcel North Sakwa/Ajigo/460.

Learned counsel submitted that contrary to Section 83 (g) of the Act, the Administrators herein have failed to complete the Administration of the Estate by producing in court a full and accurate account of the completed administration within 6 months after confirmation of Grant on 26<sup>th</sup> July, 2017.

Indeed, at the time of Confirmation of Grant, contrary to Section 83 (e), the Administrators failed to produce a full and accurate inventory of the assets and liabilities of the Estate as well as a full and accurate account of all dealings therewith.

Indeed, as deponed in detail in the Supporting Affidavit, the Administrators irregularly and unlawfully transferred some assets to their personal names or Third Parties upon concealing the same from this Honourable Court contrary to Section 76 (b) of the Act.

The Interested Party’s joinder in these Proceedings as well as his and the Administrators’ Replying Affidavits admit improper and unlawful dealings and sale of properties belonging to the Estate prior to filing and/or before completion of the Succession process in a manner that prejudiced the Applicant and other Beneficiaries.

The Administrators further failed to proceed diligently with the Administration thereby leaving assets in possession of the Third Parties or wilfully licensing a Third Party (Safaricom Limited PLC) and collecting Rental Income which has neither been declared nor accounted for.



Counsel sought reliance in Section 73 of the *Probate and Administration Rules* which grants this Honourable Court inherent powers and Discretion as follows; -

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the Due Process of the court”

It was submitted that the Applicant/Objector has established that indeed due to inadvertent mistake, the Order made on 15<sup>th</sup> November, 2023 is unenforceable due to errors on the face of the Record.

The Administrators and/or Interested Party have addressed extraneous and irrelevant issues vide the Replying Affidavits sworn on 10<sup>th</sup> December, 2024. Indeed, it seems the Administrators and Interested Party are responding to the Summons for Revocation of Grant dated 4<sup>th</sup> May, 2023 which has been disposed of vide the Order made on 15<sup>th</sup> November, 2023 albeit with errors on the face of the Record mentioned above.

In the foregoing circumstances, it was submitted that the Applicant/Objector merits the prayers 1(a) and 1(b) as pleaded in the Notice of Motion dated 22<sup>nd</sup> January, 2024.

It was further submitted that the irregular and unlawful participation of the Interested Party in these proceedings confirm the Objector’s position that the Administrators disposed of huge portions of Land and/or the Estate without going through Succession. Therefore, the Administrators have unwittingly provided additional proof of mismanagement of the Estate contrary to Section 76 of the Succession Act.

10. The 2<sup>nd</sup> and 3<sup>rd</sup> Administrators submissions are dated 20/3/2025. They submitted that the Applicant’s hands are unclean because he colluded with the brother Daudi Omondi Oballa and fraudulently sold land Title No.North Sakwa/Ajigo/2406, pretending that the deceased administrator Dinnah Adoyo Oballa is the one who sold it. Title deed was even issued in the name of Daudi Omondi Oballa as per the search dated 15<sup>th</sup> July,2022; that he went on to sell part of the property to another party. The property being part of land Title No.North Sakwa/Ajigo/2406 which was sold by the Applicant together with his said brother is now fenced off; that the property in question land Title No.North Sakwa/Ajigo/2406, was subdivided and North Sakwa/Ajigo/3559 and 3560 issued. It had however been given to the late Dinnah Adoyo Oballa by the deceased husband Jakinda Samwel Oballa in the year 1958.All the houses were allocated property and the late Dinnah Adoyo Oballa farmed the land since the year 1958. The Applicant’s mother was given a property in Siaya but they mismanaged it and had it sold; that the late Dinnah Adoyo Oballa did not have a child and as such she sold part of the property to Moses Martin Okello Odiyo as this was her property; that the Applicant together with his brother wanted to disinherit the late Dinnah Adoyo Oballa because she did not have a child. They have even allocated themselves other rental properties after their step mother Dinnah Adoyo Oballa passed on and are collecting rent and that they have not mismanaged any property forming part of the estate as they had to sell some properties in order to pay of loans that had been borrowed by the deceased from Agricultural Finance Corporation and Thabiti Finance Limited and that they needed to salvage their home from being auctioned.
11. They submitted that the Applicant’s sole aim is to disinherit everyone so that he acquires all the property together with his brother. Their house was allocated a lot of property but they have mismanaged the same and /or disposed of. Siaya /Karapul/953 was given to the third house where the Applicant comes from. It was misappropriated and disposed of.



12. It was further submitted that the deceased left when he had already distributed property to all the houses and /or beneficiaries; that the Respondents have well managed the property that was left but the Applicant however wants to disrupt everything.

13. They submitted that the Application dated 22<sup>nd</sup> January,2024 is an afterthought and should not be allowed. There was no illegal change of proprietorship as has been alleged by the applicant.

It was finally submitted that the Application be dismissed with costs.

14. The interested party Moses Martin Okello Odiyo filed submissions dated 20/3/2025. The same were a reiteration of the averments in his affidavit sworn on 10/12/2024. His said submissions were a replica of those submitted by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. It was submitted that the interested party obtained property which he bought from the 1<sup>st</sup> Administrator who has since died and that the Applicant's earlier application dated 4/5/2024 seeking revocation of grant which led to the cancellation of titles vide the court ruling dated 15/11/2023 was never served on him in order to enable him defend himself. It was submitted that the titles should not be cancelled unless he has been given a hearing. He submitted that the application is afterthought and should be dismissed with costs.

15. I have considered the application and the rival affidavits as well as the submissions filed. It is not in dispute that the Applicant herein had filed a summons for revocation of grant dated 4/5/2023 which was duly heard and determined by Ogola J, on 15/11/2023 wherein the prayers sought by the Applicant were allowed as prayed. It is also not in dispute that the said Moses Martin Okello Odiyo who claims to be an interested party in the matter has not sought leave from the court to be enjoined as a party in these proceedings. I find the issue for determination is whether the application has merit.

16. Since the application dated 22/1/2024 seeks for review of orders made by this court on 15/11/2023, the relevant law is found in Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules which are as follows:

Section 80

“ Any person who considers himself aggrieved.....

- i. By a Decree or Order from which an Appeal is allowed by this Act but from which no Appeal has been preferred; or
- ii. By a Decree or Order from which no Appeal is allowed by this Act,  
May apply for a review Judgement to the Court which passed the Decree or made the Order and the court may make such Order thereon as it thinks fit.”

Order 45 Rule 1 stipulates similar provisions for Review and further sets the following parameters that circumscribe an Application for Review as follows; -

- a. Discovery of new and important matter or evidence which alter the exercise of Due Diligence, was not within the Applicant's knowledge or could not be produced by him at the time when the Decree was passed or the Order made; or
- b. On account of some mistake or error apparent on the face of the record; or
- c. For any other sufficient reason.

17. From the foregoing provisions, the Applicant who has approached this court for review is under obligation to satisfy the above conditions in order to merit an order for review of the orders dated 15/11/2023. The Applicant in his application has indicated that there are errors apparent on the record



regarding the order dated 15/11/2023 in which he has not been able to actualize the prayers he had sought in his application dated 4/5/2023. It seems therefore that the Applicant is suggesting that this court made an error when it issued the orders dated 15/11/2023 and as a result the Applicant is unable to carry out the orders as given by the court. according to the Applicant, this court failed to capture the correct land title numbers originally belonging to the deceased and which gave rise to the new titles which were ordered cancelled and to revert back in the name of the deceased. Again, the Applicant in his application seems to suggest that his earlier application dated 4/5/2023 did not capture the relevant land titles which were in the name of the deceased before being changed into new numbers. Looking at the application for review, the Applicant appears to be making a two-pronged approach in his quest for orders of revision. Whereas on the one hand, he claims that this court made an error on the face of the record by making an order for the cancellation of new titles instead of the old titles. On the other hand, the Applicant seems to say that his earlier application dated 4/5/2023 did not capture the details of the old titles and therefore he now seeks that a revision be allowed so as to correct the anomaly. In order to establish whether the Applicant has fulfilled the requisite condition for review, it is necessary to reproduce the prayers verbatim which he had sought in his application for revocation of grant dated 4/5/2023 as well as the orders issued by this court on 15/11/2023.

18. In the application dated 4/5/2023 the Applicant had sought the following prayers.
  1. That this application be certified as urgent.
  2. That the Grant of Representation and Certificate for Confirmation issued to the 1<sup>st</sup> and 2<sup>nd</sup> Administrator herein on the 26<sup>th</sup> July, 2017 be and is hereby revoked and annulled.
  3. That a temporary injunction do issue to restrain the Respondents jointly and severally, their respective agents, servants, employees, assigns and/or personal representatives from alienating, taking possession, transferring, selling, wasting, disposing of either by Private treaty or public auction and or interfering with the estate of the deceased; LR No North/Sakwa/Nyawita/883, subdivided into LR No North/Sakwa/Nyawita/2260 and 2261, LR No Uyoma/Kokwiri/4194 subdivided into No 4355 and 4356 LR No North Sakwa/Ajigo/460 subdivided into LR No 2406 and 2407 and LR No North Sakwa/Ajigo/1041, pending the Inter partes hearing and determination of this suit, Application and/or further court directions.
  4. That all public entries and record undertaken by the Respondents before or on account of the Certificate of Confirmation of Grant issued on the 26/7/2017 here in regard to illegal change of proprietorship of the suit properties mother parcels be and are hereby declared null and void ab initio.
  5. That all the titles of LR No North Sakwa/Nyawita/2260 and 2261, LR No Uyoma/Kokwiri/4355 and 4356 and LR No North Sakwa/Nyawita/2406 and 2407 be cancelled and their ownership be reverted to the mother parcels and to the name of the deceased for the purpose of distribution of the estate.
  6. That the cost of this application be in the cause.
19. The orders made by the court dated 15/11/2023 were as follows:
  1. That the application of the Objector brought under Section 76 of the *Law of Succession Act* has merit and the same is hereby allowed.
  2. That all public entries and record undertaken by the Respondents before or on account of the certificate of confirmation of grant issued on 26/7/2017 herein regard to illegal change of



proprietorship of the suit properties mother parcels be and are hereby declared null and void ab initio.

3. That all the titles of LR Nos. North/Sakwa/2260 and 2261, Uyoma/Kokwiri/4355 and 4356 and North/Sakwa/Nyawita/2406 and 2407 be cancelled and ownership of same to revert to the mother parcels and to the name of the deceased for purpose of distribution of the estate.
  4. That costs of this objection application to be borne by the Respondent.
20. It is clear from the foregoing that the prayers sought by the Applicant vide No 5 were allowed as prayed vide Order No 3 of the Ruling by Ogembo J, dated 15/11/2023. Hence, the Applicant succeeded in getting the prayers he had requested. The court did not make any error and that there is none on the face of the record since this court allowed prayers as sought by the Applicant. It is instructive that the Applicant is deemed to have been aware of the reliefs he needed to present to court for determination. Those are matters which were deemed to be within his knowledge at the time he filed the application and canvassed it. I find that the issue having been within the knowledge of the Applicant and cannot now be taken as a discovery of new and important matter which was not within the knowledge of the Applicant at the time he lodged his application dated 4/5/2023. The Applicants present application seeks to introduce new prayers which were not captured in the previous application. I find the Applicant has not satisfied the conditions imposed by Section 80 of the Civil Procedure Act and Order 45 Rule 1 of the Civil Procedure Rules.
- Order 45 Rule 1 of the Civil Procedure Rules entails a situation where there is a discovery of new and important matter or evidence which alter the exercise of due diligence, was not within the Applicant's 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. Whereas the Applicant wants this court to believe that there is an error apparent on the record, he again seems to confirm that his earlier application dated 4/5/2023 requires to be reviewed. The Applicant cannot be permitted to seek review of his application dated 4/5/2023 which has since been determined while at the same time, he seeks for review of the order of this court dated 15/11/2023 which determined his said application dated 4/5/2023. It is clear that the Applicant wants to blame this court for his own mistakes. The Applicant is deemed to be aware that he who makes his bed must lie on it. The Applicant therefore cannot run away from his mistake in failing to plead the correct title numbers which he sought the court to determine or issue orders thereon. The issue of those titles was within the knowledge of the Applicant at the time he lodged the application dated 4/5/2023. I find no error apparent on the record regarding the orders made by this court dated 15/11/2023 as the court granted the Applicant the orders he had sought. It is dishonest on the part of the Applicant to make spurious claim against the court yet he is the one who framed his application and brought it to court for determination and that the court did just that by giving him the orders he sought.
21. it is noted that the Applicant, Respondents and the purported interested party dwelt mainly on the previous application dated 4/5/2023 seeking for revocation of grant and which was duly determined by this court. hence, it was unnecessary for the parties to dwell on matters that have already been determined by the court. this court has strictly steered clear of these issues and concentrated on matters of review.
  22. finally, as regards the issue of the purported interested party, Moses Martin Okelo Odiyo, it is noted that the said individual just juttred into the proceedings without seeking the necessary leave to be enjoined into the proceedings. Hence, the issues he has raised does not warrant this court's attention.
  23. In view of the foregoing observations, it is my finding that the Applicant's application dated 27/1/2024 lacks merit. The same is dismissed. Each party to bear their own costs.



**DATED AND DELIVERED AT SIAYA THIS 30<sup>TH</sup> DAY OF MAY, 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

Jaoko.....for the Applicant.

N/A Mutisya.....for Administrators.

N/A Mutisya.....for Purported Interested Party

Okumu.....Court Assistant.

