



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Mwau Mathi (Deceased) (Probate & Administration
193 of 2017) [2025] KEHC 9444 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9444 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
PROBATE & ADMINISTRATION 193 OF 2017**

TM MATHEKA, J

JUNE 27, 2025

RULING

1. On 28/6/2024 I delivered a judgment where I found that Mwau Manthi (deceased) had two wives – Mutanga, and Mumbua.
2. I also revoked the grant that had been made to Manthi Mwau Yuva and ordered that a fresh one to issue to himself and Mbonoka Muteti, Muteti Mathuva and Peter Manthi Muteti. This was made on 23rd July 2024 together with the certificate of confirmation of grant
3. I directed that the estate of Mwau Manthi be divided into 4 equal shares: Mutanga one share, to be inherited by the applicant, Munyao Manthi and Kii Mutuse; and Mumbua three shares to be inherited by her two sons Peter Muteti Manthi and Mwau Manthi and in their absence, their children.
4. By an application dated 31/7/2024 the Applicant sought orders that this court do review its judgment on the ground that the court was misled to believe that Mwau Manthi (deceased) had 2 wives.
5. That the correct position was that there was Manthi Yuva (Deceased) who was the father of Mwau Manthi (the deceased herein). That Mutanga and Mumbua were the wives of this Manthi Yuva. That the properties the late Manthi Yuva were registered in the name of Mwau Manthi (deceased herein) had only one child – Mutuku Mwau David.
6. That the properties of Manthi Yuva were registered in the name of Mwau Manthi in trust for his Manthi Yuva 's beneficiaries. That the applicant has filed this succession in the mistaken belief that he could distribute the estate of Manthi Yuva to his beneficiaries in this cause.
7. Relying on Section 80 of the *Civil Procedure Act*, and order 45 Rule 1 of the *Civil Procedure Rules*, the applicant urges this court to review/set aside the judgment. He submits that there are disputed facts that the said Mwau Manthi had only one wife – with one son, 6 daughters – a fact conceded by the objectors, and that Manthi Yuva had 2 wives, that the chief's letter dated 21/9/2015 was defective on the facts and the true facts were expressed in the chief's letter dated 24/9/202.



8. That this court should set aside its judgment, and allow the beneficiaries of the estate of Manthi Yuva to file a cause in the Environment and Land Court for the cancellation of the title that is in the name of Manthi Mwau (the deceased herein) and pursue the distribution of the estate in another succession cause.
9. The court is referred to *Waitbaka vs Basbaeki & 2 others* [2024] KEHC 12791(KLR) on the grounds upon which the court can review its judgment.
10. The application was opposed through replying affidavit of the respondents, and their submissions.
11. It is submitted that it is the applicant vide his own replying affidavit of 12/4/2018, who informed the court that the deceased had 2 wives supported by the chief's letter of 7/1/2019 – setting out the beneficiaries of the deceased.
12. On jurisdiction, it is submitted that parties agreed that the deceased herein held the property in trust for the beneficiaries of the late Manthi Yuva – this cause was brought for those beneficiaries, that the court had distributed the estate in accordance with the law, and there was nothing to take away the jurisdiction of the court.
13. The Court was referred to the *Owners of M/vessel "Lilian" Vs Caltex Oil (Kenya) Ltd* [1989] eKLR. It is pointed out the ELC Court cannot carry out the distribution of the Estate of a deceased person see *Re: Estate of PNN (deceased)* [2017] eKLR. That in this case there is no dispute on the ownership of the estate of the deceased to warrant a matter in the ELC court.
14. That for review to succeed the applicant must demonstrate the discovery of new and important matter, or evidence, which was not in the knowledge of the applicant, even after exercise of due diligence could not have been produced at the material time, mistake or error on the face of the record, or other sufficient cause.
15. The court is urged to be cautious and is referred to *James King'aru & 17 others Vs J.M Kangari & Muhu Holdings Ltd & 2 others* [2005] eKLR.
16. It is submitted that the court distributed the estate fairly and as required by law and any titles that belonged to deceased that could have been wrongfully transferred can be revoked by this court in a succession cause such as this to revert to the estate.
17. Having considered the application, the submissions the only issue is whether the application for review is tenable.
18. I have taken into consideration the provision of the law – Section 80 of the *Civil Procedure Act*, order 45 Rule 1 of the *CPR* and Rule 63 of the *P&A Rules*.

Section 80 of the *CPA* states

Review 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 of judgment 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 provides inter alia

1. Application for review of decree or order [Order 45, rule 1.] (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.
19. The record will show that it is the applicant as the petitioner who told the court in his own affidavit – that the deceased had 2 wives, one of woman was his grandmother. He said his grandmother was Mutanga. He said Mutanga was the mother to his father. He proposed subdivision of the estate equally between him, Mwau and Muteti. He had left out the respondents who came in as objectors.
 20. In that affidavit sworn on 10/4/2018 Manthi Mwau Yuva (the Petitioner/applicant) deponed that the resolution of the dispute herein was not in revocation of the grant but in subdivision of the estate. He wanted it subdivided into three equal portions. One share for him and his siblings, another share for Muteti, father of applicant another share for the children of Mwau.
 21. I did the exact thing except – I followed the houses of the deceased as presented by the applicant.
 22. So what is new? According to the applicant the new fact is that Mutanga and Mumbua were not the wives of the deceased herein but the wives of Mwanthi Yuva the father of the deceased. That he filed this cause mistaken that he could distribute the estate on Mwanthi Yuva trough this cause.
 23. Evidently the applicant knew from the very start that the estate he was dealing with was that of his grandfather, because his grandfather had trusted his father to register his property in his name. Secondly he knew the beneficiaries of that estate of his grandfather to be the brothers of his father and their children. That is why he revealed the two houses of his grandfather and the other sons of his grandfather, and proposed the distribution he did because that was the pure truth.
 24. Did he know this truth? He knew. Could he have been mistaken? To my mind, this is not new evidence. While he may have misled the court to find that the deceased herein had two wives, there was no mistake in the list of beneficiaries of the estate.
 25. There is no way he could have proceeded with the administration of the estate without the respondents showing up and laying claim to what was the share of their fathers. And the applicant was aware that there were three of them.
 26. I find that there is no new evidence – every evidence now presented was there at the time the court made its determination – and if indeed the applicant had proceeded from the point of misleading the court then he should have himself to blame.
 27. What is clear is that the property that was placed before me is now said to have belonged to his grandfather – and that he, the applicant filed for succession for the distribution of the estate because his grandfather had registered it in his father’s name for the benefit of his grandfather’s beneficiaries.



28. Clearly – if there was any error – it was brought by himself – but nothing changes the position of the estate- the owner of the estate had 2 wives – the beneficiaries are the ones named in my judgment, and they are the ones to whom the estate was distributed.
29. What changes now is that the deceased did not have two wives. The two wives were the wives of the Mwanthi Yavu the father of Mwanthi Mwau (deceased herein).
30. It is not disputed that the property was to be shared among the beneficiaries of Mwanthi Yuva. The distribution of the estate in accordance with the houses is significant because the house of Mutang'a can only inherit what was due to Mutang'a because her children were those of her iweto wife. The house of Mumbua has two sons. So the distribution in accordance with the number of units is the correct one in my view.
31. The argument that the other beneficiaries should be directed to file a case at the ELC court cannot be right. The applicant acknowledges that they are beneficiaries of the estate. Why would he want them to go through a different route to the same outcome? There is no dispute as to the ownership of the land to warrant that route.
19. In the circumstances I am not persuaded of any reason to warrant a review of the judgment.
20. The application is dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED VIA CTS THIS 27TH DAY OF JUNE 2025

MUMBUA T MATHEKA

JUDGE

CA Chrispol

