



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Wachira Waithaka (Deceased) (Succession Cause
156 of 2000) [2025] KEHC 9244 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9244 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 156 OF 2000
MA ODERO, J
JUNE 27, 2025**

BETWEEN

JAMES NJOROGE NJOMO APPLICANT

AND

MARY NJOKI WACHIRA 1ST RESPONDENT

SISTO WAITHAKA WACHIRA 2ND RESPONDENT

RULING

1. Before this Court is the Amended Summons dated 31st March 2023 by which the Applicant JAMES NJOROGE NJOMO seeks the following orders:-
 - “(a) SPENT
 - (b) SPENT
 - (c) SPENT
 - (d) That this Honourable court be pleased to grant leave to the firm of Ms. Mathea Gikunyu & Co. Advocates to come on record for the applicant herein after close of proceedings and/or judgment.
 - (e) That this Honourable Court be pleased to review its Ruling dated and delivered at Nyeri on, the 26th February, 2010, at page 3 line 10 thereof to read 3.4 acres and not acres.
 - (f) That this honourable court be pleased to review and/or vary its order issued on the 1st day of August, 2022 by including the applicant herein as a person beneficially interested in 3.4 acres out of the deceased person’s Lr N. Nyeri/



naromoru/386 as per the orders of this honourable court issued vide a ruling delivered on the 26th day of February 2010 in these proceedings.

(g) That costs be provided for.

2. The application which was premised upon Section 47 of the *Law of Succession Act*, Rule 63(1) of the Probate and Administration Rules, Order 9, Order 45 Rule 1 of the Civil Procedure Rules and any other enabling provisions of the law was supported by the Affidavit of even date sworn by the Applicant.
3. The Respondent/Administrators Mary Njoki Wachira And Sisto Waithaka Wachira both opposed the application through the Grounds of opposition dated 5th April 2023 and the Replying Affidavit dated 18th September 2024 sworn by the 1st Respondent.
4. The matter was canvassed by way of written submissions. The Applicant filed written submissions dated 20th October 2024 whilst the Respondents relied upon their written submissions dated 28th February 2025.

Background

5. This matter relates to the estate of the late Wachira Waithaka (hereinafter the 'Deceased') who died intestate on 14th July 1998. A copy of the Death Certificate Serial No. 522031 was filed in court on 8th May 2000.
6. The Deceased was survived by his widow Wangui Wachira, A Son Sisto Waithaka Wachira And A Daughter Mary Njoki.
7. The estate of the Deceased comprised two parcels of land being LR Number Nyeri/naromoru/1351 And Lr Number Nyeri/naromoru/1353.
8. Following the demise of the Deceased the widow 'Wangui Wachira' petitioned the court for Grant of letters of Administration Intestate. A Grant was duly later issued to her on 15th January 2003.
9. The widow unfortunately passed away on 20th September 2015 and the Grant issued to her was revoked. A fresh Grant was later issued jointly to the two children of the Deceased. That Grant was duly confirmed on 31st January 2019.
10. Vide a Ruling delivered on 26th February 2010 Hon. Justice Serگون found that the 2nd Protestor (the Applicant herein) James Njoroge Njomo had a genuine claim over part of the estate of the Deceased. In that ruling the court recognized that LR No. Nyeri/naromoru/1351 Was Derived From Lr No. Nyeri/naromoru/386 following the sub-division of Plot 386. The Applicant had averred that he and another had purchased from the Deceased six (6) acres of land excised from Nyeri/naromoru/386. That unfortunately the Deceased died before effecting the transfer of the land to the Applicant.
11. The widow however opposed the Applicants claim arguing that no Land Control Board Consent had been obtained for the alleged sale and

transfer.

12. The Judge declined to confirm the Grant and instead directed the Petitioner reconsider the proposed mode of distribution of the estate.
13. The court then adjourned the matter for thirty (30) days to enable the petitioner consider the issues which had been raised in that ruling.



14. It would appear that following that ruling of 26th February 2010 a fresh Grant was issued to the two Respondents on 18th March 2022. That Grant was duly confirmed on 1st August 2022. The certificate of confirmation of Grant which appears as Annexure “WZ/61/II” to the Replying affidavit dated 18th September 2024 set out the mode of distribution of the estate as follows;-

Name Description of Property Share of Heirs

Mary Njoki Wachira Lr No. Nyeri/naromoru/1351

Sisto Waithaka Wachira Lr No. Nyeri/naromoru/1351 Equal Shares

Mary Wangi Giteru Lr No. Nyeri/naromoru/1353 2.0 Acres

Bernard Mureithi Muriuki Lr No. Nyeri/naromoru/1353 5½ Acres

Mary Njoki Wachira Lr No. Nyeri/naromoru/1353 11.84 Acres

Sisto Waithaka Wachira Lr No. Nyeri/naromoru/1353 11.84 Acres

15. The Applicant now seeks to have the Certificate of confirmed Grant stayed. He also prays that the Ruling of 26th February 2010 be reviewed. That the orders of 1st August 2022 be varied to include the Applicant as a person having a beneficial interest in the estate and that the court make orders to provide that the Applicant be allocated 3.4 acres out of the parcel of land known as LR Number Nyeri/naromoru/386.

Analysis And Determination

16. I have carefully considered the application before this court, the reply filed thereto as well as the written submissions filed by both parties.
17. Prayer (d) of the application seeks that leave be granted to the firm of Ms Mathea Gikunju & Co Advocates to come on record for the Applicant after delivery of judgment. This prayer has not been opposed by the Respondents. I therefore allow prayer (d) of the application.
18. By Prayers (e) and (f) of the application the applicant seeks to have the Ruling delivered on 26th February 2010 reviewed to include himself as a person who has a beneficial interest in 3.4 acres out of the estate property being Lr. No. Nyeri/naromoru/386 (hereinafter ‘the suit land’) The Applicant has sought to have the ruling delivered on 26th February 2010 reviewed. Section 80 of the Civil Procedure Act states that:

“ 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”.

19. Order 45 of the Civil Procedure Rules 2010 which provides for review is imported into the Law of Succession Act Cap 160 Laws of Kenya by virtue of Section 47 of the Act and Rule 63(1) of the Probate and Administration Rules.



20. In the case of John Mundia Njoroge & 9 Others -vs- Cecilia Muthoni Njoroge & Another [2016] EKLK the Court held that

“...the only provisions of the Civil Procedure Rules imported to the Law of Succession Act are orders dealing with service of summons, interrogations, discoveries, inspection, consolidation of suits, summoning and attending witnesses, affidavits, review and computation of time. Clearly, Order 45 relating to review is one of the Civil Procedure Rules imported into succession practice by rule 63 of the Probate and Administration Rules. An application for review in succession proceedings can be brought by a party to the proceedings, a beneficiary to the estate or any interested party. However, the application must meet the substantive requirements of an application brought for review set out in order 45 of the Civil Procedure Rules”

21. Under Order 45 of the Civil Procedure Rules, review can only be allowed under the following circumstances.

- (a) Discovery of new and important matter of evidence which, after 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.
- (b) Mistake or error apparent on the face of the record.
- (c) Any other sufficient reason which may make the court to review its order.

22. It follows therefore that Order 45 provides for three circumstances under when an order for review can be made. The applicant must demonstrate to the court that there has been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could be produced by him at the time when the decree was passed. Secondly, the applicant must demonstrate to the court that there has some mistake or error apparent on the face of the record. Thirdly an application for review can be allowed for any other sufficient reason.

23. This court is sitting as a Probate Court with the duty and mandate to oversee and supervise the distribution of the estate of the Deceased to the genuine beneficiaries of said estate.

24. The Applicant is not a beneficiary to the estate of the Deceased. The Applicant is a person who claims to have purchased the suit property from the Deceased. Moreover title No. NYERI/NAROMORU/386 to which the Applicant claims a beneficial share is not one of the properties set for distribution in the confirmed Grant. As such this application is superfluous.

25. An application for review ought to be presented in court as soon as possible without unreasonable delay. I note that the ruling being referred to in this application was delivered on February 2010. This application for review is being made in March 2023 almost thirteen (13) years after the ruling was delivered. No explanation has been proffered for this delay which in my view is certainly inordinate.

26. In my view this application for review is time barred by virtue of Section 4(4) of the statute of Limitations Act Cap 22 Laws of Kenya which provides that

“An action may not be brought upon a judgment after the end of twelve years from the date on which the judgment was delivered, or (where the judgment or a subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at a recurring periods) the date of the default in making the payment or delivery in question, and



no arrears of interest in respect of a judgment debt may be recovered after the expiration of six years from the date on which the interest became due.” [Own emphasis]

27. Finally if the Applicant claims a beneficial interest in any part of the estate property then his remedy lies not within this succession cause but before the Environment and Land Court [ELC] as established by Article 162 (2) (b) of *the Constitution* of Kenya 2010. Under Section 13 of the *Environment and Land Court Act* the ELC is the only court with the mandate to determine issues relating to ownership, use and occupation of land.
28. Indeed in the Ruling dated 26th February 2010 the Honourable Judge noted that the Applicant may have had a genuine claim, but went on to state that
- “Their claim cannot be ignored though they may not be sorted out through these proceedings.”
29. By this the learned Judge was of the same view that a claim for ownership of estate land cannot be ventilated under a succession cause.
30. It is only once the Applicant obtains orders in his favour in the ELC that he can seek to have those orders enforced and/or implemented in the probate court. In *Re Estate Of Stone Kathubi Muinde (deceased)* [2016] Eklr Hon. Justice William Musyoka held that:-
- “Such claims to ownership of alleged estate property, as between the estate and a third party, should be resolved through the civil process in a civil suit properly brought before a civil court in accordance with the provisions of the *Civil Procedure Act* and the Civil Procedure Rules.
- This could mean filing suit at the magistrates’ courts, or at the Civil or Commercial Divisions of the High Court, or at the environment and Land Court. If a decree is obtained in such suit in favour of the claimant then such decree should be presented to the probate court in the succession cause so that that court can give effect to it.” [Own emphasis]
31. In conclusion I find that no valid grounds have been advanced for review of the Ruling delivered on 26th February 2010. The application dated 31st March 2023 is dismissed in its entirety. Costs to be met by the Applicant.

DATED IN NYERI THIS 27TH DAY OF JUNE, 2025

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MAUREEN A. ODERO

JUDGE

