



REPUBLIC OF KENYA



KENYA LAW

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**In re Estate of Fredrick Mwaniki Mbogo alias Mwaniki Mbogo (Deceased)
(Succession Cause 11 of 2018) [2025] KEHC 11332 (KLR) (30 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11332 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
SUCCESSION CAUSE 11 OF 2018
RM MWONGO, J
JULY 30, 2025
FORMERLY SENIOR PRINCIPAL MAGISTRATE AT
KERUGOYA SUCCESSION CAUSE NO.56 OF 2012
IN THE MATTER OF THE ESTATE OF FREDRICK
MWANIKI MBOGO ALIAS MWANIKI MBOGO (DECEASED)**

BETWEEN

CHARITY WARUGURU PETITIONER

AND

ANTHONY MBOGO MUNENE 1ST PROTESTOR

JANE WAGUAMA KAMAU 2ND PROTESTOR

RULING

1. The applicants filed a notice of motion dated 20th December 2024, premised on the grounds set out on its face and in the supporting affidavit, seeking orders that:
 - a. Spent;
 - b. That the court be pleased to set aside and/or review the orders issued on 13th February 2024 dismissing the protestor/applicant's protest dated 22nd August 2001 and reinstate for hearing the said protest; and
 - c. Costs of the application be in the cause.
2. On 28th September 2023, this court ordered that the protest be prosecuted within 90 days failing which the same shall stand dismissed. The earliest date available, and which was fixed for hearing was 13th November 2023. However, that date was gazetted as a public holiday. The applicants had to seek for another date before the Deputy Registrar but by then, the 90 days period had already lapsed. The



delay states the applicant, was caused by factors beyond their control. They filed an application for reinstatement but the court struck it out, urging the applicants to seek review of the dismissal orders instead. The application herein is one for review of the dismissal order.

Replying Affidavit

3. Through a replying affidavit, the respondent opposed the application stating that the same is frivolous, vexatious and an abuse of the court process. That there is no sufficient reason why the applicants failed to obey the court's order to prosecute the application within 90 days. She stated that the application is targeted at subverting justice and it should be dismissed.

Further Affidavit

4. The applicants filed a further affidavit rehashing their averments in the application and stating that the application herein gives them a chance to have their protest heard in the interest of justice.

Parties' Submissions

5. The application was canvassed by way of written submissions.
6. In their submissions, the applicants relied on Order 45 of the Civil Procedure Rules and the Oxygen Principles. They also referred to the cases of *Burhani Decorators & Contractors v Morning Foods Ltd & another* [2014] KEHC 656 (KLR), *Philip Keipto Chemwolo & another v Augustine Kubende* [1986] eKLR and *Bank of Africa Kenya Limited v Put Sarajevo General Engineering Co.Ltd, Esed Becirevic & Adnan Terzic* [2018] KEHC 10153 (KLR). They argued that they are not guilty of laches since they filed the relevant applications as soon as they became necessary. The court could only reinstate the protest hearing through a review application which is now filed herein.
7. The respondent relied on Section 80 of the [Civil Procedure Act](#) and Order 45 Rule (1)(b) of the Civil Procedure Rules and argued that the orders sought do not meet the parameters for review since there is no error apparent on the face of the record or discovery of a new matter. She relied on the cases of *Republic v Advocates Disciplinary Tribunal Exparte Apollo Mboya* [2019] KEHC 10910 (KLR) and *Suleiman Murunga v Nilestar Holdings Limited & another* [2015] KEELC 264 (KLR).

Issue for Determination

8. The sole issue for determination is whether the court should review its order issued on 13th February 2024 following which the protest was dismissed.

Analysis and Determination

9. Review is provided for under Section 80 of the [Civil Procedure Act](#) 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 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.”



10. Similarly, Order 45 Rule 1 of the Civil Procedure Rules 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.” [Emphasis added]

11. There are only 3 factors for the court to consider before reviewing its findings, these are:

- a. 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 not be produced by him at the time when the decree was passed; or
- b. That there has been some mistake or error apparent on the face of the record; or
- c. Any other sufficient reason.”

12. The dismissal order by the court was invoked upon non-compliance. The applicants failed to prosecute the protest within the prescribed 90 days. The time lapsed and could not be redeemed since a public holiday was gazetted when it had not been foreseen. If it had been foreseen, the court would have given a different date for hearing of the protest.

13. There is also the ground for review, namely, “any other sufficient reason”. This Court in its ruling of 13th November, 2024 stated:

“The applicants have extensively explained the reason for their failure to prosecute the protest within the stipulated period. It may well be that the delay was not of their own making but they shall need to move the Court to review and/or set aside the order dismissing the protest before seeking reinstate.”

14. In addition, the orders of the court may be reviewed on the strength of Article 48 of *the Constitution* which guarantees every person access to justice. The previous application by the applicants was struck out but it was filed timeously. This application was also filed without delay. This amounts to sufficient reason to review the orders.

15. From the Court’s sentiments, it clearly understood the predicament of the applicants leading to delay in prosecuting the protest. The Court notes from the proceedings that the date fixed by the Court for mention before the DR was 13/11/2023. In fact, the DR sat on the matter on 14/11/2023 in the absence of the respondent. This, in my view, constitutes “any other sufficient reason” in terms of order 45 R 1 (b).



Disposition

16. In light of the foregoing, the application succeeds and the following orders are issued:
- a. This court's order issued on 13th February 2024 dismissing the protestors/applicant's protest dated 22nd August 2001 is hereby set aside:
 - b. The Protestors/Applicants' protest dated 22nd August 2001 is hereby reinstated for hearing forthwith; and
 - c. Costs of the application shall be in the cause.
17. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 30TH DAY OF JULY, 2025.

R. MWONGO

JUDGE

Delivered in the presence of:

1. N. Magee for Petitioner
2. Antony Mbogo Munene (1st Protestor) in Person
3. Gachoki Murithi (Son of Jane Waguama Kamau - 2nd Protestor)
4. Francis Munyao - Court Assistant

