



In re Estate of Vincent Komurgor (Deceased) (Succession Cause 193 of 2003 & 317 of 2009 (Consolidated)) [2025] KEHC 11824 (KLR) (8 August 2025) (Ruling)

Neutral citation: [2025] KEHC 11824 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
SUCCESSION CAUSE 193 OF 2003 & 317 OF 2009 (CONSOLIDATED)
RN NYAKUNDI, J
AUGUST 8, 2025**

IN THE MATTER OF THE ESTATE OF THE LATE VINCENT KOMURGOR - DECEASED

BETWEEN

**GRACE CHEPKOSGEI KIPROTICH 1ST OBJECTOR
BEN KIMUTAI ROTICH 2ND OBJECTOR
DAVID KIBET ROTICH 3RD OBJECTOR**

AND

**IGNATIUS KIPKEMEI ROTICH 1ST PETITIONER
LOUIS M. KIPRUGUT ROTICH 2ND PETITIONER
MARK KIPLAGAT ROTICH 3RD PETITIONER**

RULING

1. Before me for determination are two applications for determination, first the petitioner's application dated 22nd May, 2025 expressed under the provisions of section 1A, 1B, 3 and 3A of the [Civil Procedure Act](#), Order 45 Rule 1 and 2 of the Civil Procedure Rules 2010. The petitioners seek orders to wit: -
 - a. The Honourable Court be pleased to review and set aside order dated 23rd December, 2024 for the reason that the Court revoked a non-existent Grant in Succession No. 193 of 2003 the Grant having fully been executed and despite the file being consolidated with succession 317 of 2009 which was the lead file.
 - b. That there be stay of execution pending hearing and determination of this application.
 - c. A temporary injunction be and is hereby issued restraining the objectors either acting by themselves, servants and or agents from alienating, advertising for sale, offering for sale, selling, taking possession of, leasing, trespassing, transferring and or otherwise disposing off land



parcels known as Eldoret Municipality/block 14/73 and Kakamega/Sergoit 148 pending the hearing and determination of this application inter-parties.

- d. Costs be in the cause.
2. The application was anchored on grounds that:
 - a. The court made a ruling on the 23rd December, 2024 whereby it revoked the Grant issued in Succession No. 193 of 2003.
 - b. That the Grant that was revoked was non-existent for the reason that the estate had already been transferred to the late Anna Chepchirchir Kiprotich.
 - c. That after the said Anna Chepchirchir Kiprotich passed on, the beneficiaries filed a Succession Cause No. 317 of 2009.
 - d. The court by issuing the said orders disadvantages the Petitioners/Applicants for the reason that the said Grant does not exist.
 - e. There are sufficient reasons to justify a review of the said order due to revocation of a Grant that does not exist and the failure by the Honourable Court to consider file Succession Cause No. 317 of 2009 that the lead file.
 3. In response to the application, the objectors through Grace Chepkosgei Kiprotich swore a replying affidavit on 20th June, 2025 stating as follows:
 - a. That I have read the contents of the Petitioners/Applicant's application dated 22nd May 2025 and had the same explained to me by my advocates on record M/s Munyaga Githaiga Advocates LLP, and now wish to respond as hereunder;
 - b. That I am informed by my Advocates on record which information I verily believe to be true and correct that;
 - c. That the instant application is devoid of merit, frivolous, vexatious, brought in bad faith on the basis of misconceived and malicious allegations and as such the application must fail with costs to the Objectors/Respondents.
 - d. The instant application now before this court is unfounded, an afterthought and should not be allowed for want of merit.
 - e. That the petitioners/applicants' application for review should fail for the reason that the ground or grounds on which the review is being sought have not been disclosed.
 - f. That there is no error apparent on the face of the record or new and compelling evidence warranting a review.
 - g. That further, the application has been brought with unreasonable delay and in abuse of the court process.
 - h. That from the court's record, the handwritten notes by Hon. Justice Nyakundi J. on 17th October 2022, the court gave directions that the matter was slated on 19th October 2022 to queue Succession Cause No. 317 of 2009 with the present cause.
 - i. That the present cause in this case is deduced to mean succession cause no. 193 of 2003.
 - j. That on 19th October 2022, the court was indisposed and the matter was given a later date on 23rd January 2023.



- k. That on 23rd January 2023, the Coram was as follows: Mr. Isingi was holding brief for Mr. Walubengo for the objectors and Mr. Warigi for the petitioners. On this date, the court directed that Succession Cause No. 193 of 2003 be assorted with Succession Cause No. 317 of 2009.
- l. That the objectors/respondents deduced that Succession Cause No. 193 of 2003 was the lead file since their claim had its substratum on the Estate of Vincent Komurgor, which is featured under Succession Cause No. 193 of 2003.
- m. That the objectors/respondents abandoned Succession Cause No. 317 of 2009 because we have no claim to the Estate of Anna Chepchirchir Kiprotich.
- n. That the petitioners/applicants' prayer seeking stay is fatally defective and ambiguous for lack of enabling provisions on stay.
- o. That further, the prayer seeking a stay is premature for the reason that the administration process is not complete, as we were at the stage of filing the proposed mode of distribution.
- p. That the petitioners/applicants have brought an application for stay, but the application has been brought with unreasonable delay, as the ruling was delivered on 23rd December, 2024.
- q. That this dispute arose from the administration of the estate of Vincent Komurgor for the reason that the administrator in the estate obtained the grant of letters of administration intestate fraudulently by concealing material facts.
- r. That I am advised by my advocates, whose advice I verily believe to be true, that the issues in Succession Cause No. 193 of 2003 cannot be addressed in isolation of the issues in Succession Cause No. 317 of 2009, because if the same is done, it results in the disinheritance of some of the beneficiaries to the estate of Vincent Komurgor.
- s. That Vincent Komurgor died intestate on 25th May 2003 and was survived by the following dependants:
 - i. Late Anna Chepchirchir Kiprotich – Widow
 - ii. Ignatius Kipkemei Rotich – son
 - iii. Louis M Kiprugut Rotich – son
 - iv. Mark Kiplagat Rotich – son
 - v. Grace Chepkosgei Kiprotich – daughter
 - vi. Ben Kimutai Rotich – son
 - vii. David Kibet Rotich – son
- t. That on 5th April 2004, the late Anna Chepchirchir Kiprotich obtained grant of letters of administration intestate to the estate of Vincent Komurgor, which was later confirmed on 7th April 2005.
- u. That the late Anna Chepchirchir Kiprotich, knowing very well of the existence of the Objectors/Respondents, obtained the grant and confirmed the grant of letters of administration fraudulently and by concealing the material facts.



- v. That in obtaining the aforementioned grant of letters of administration intestate to the estate of Vincent Komurgor, the late Anna Chepchirchir Kiprotich fraudulently misrepresented to this Honourable Court that her children, Ignatius, Louis and Mark, were the only dependants.
- w. That in the schedule of the certificate of confirmation of grant dated 7th April 2005, the following properties were listed as the free properties of the late Vincent Komurgor:
 - i. Eldoret/Municipality/Block 14/73.
 - ii. Segorit Scheme Plot No. Kakamega/Sergoit/148.
 - iii. Lessos 1 Plot '50X100'.
 - iv. Nandi/Olessos/185.
 - v. Shares with Nation Media 8424 A/C No. 02390.
 - vi. KCB Shares 216 A/C No. 83703.
 - vii. Alico Association Company Limited Life Policy No. 2102463.
 - viii. Canon Assurance Company Limited Life Policy.\
 - ix. KCB A/C No. 073-270-642-033.
 - x. Motor Vehicle Registration Number KLR 863 Mazda
 - xi. That the entire estate of the late Vincent Komurgor devolved to the Late Anna Chepchirchir Kiprotich.
- x. That the entire estate of the late Vincent Komurgor devolved to the Late Anna Chepchirchir Kiprotich.
- y. That on 25th September 2009, Anna Chepchirchir Kiprotich died and was survived by the following dependants: -
 - i. Ignatius Kipkemei Rotich – son.
 - ii. Louis M Kiprugut Rotich – son.
 - iii. Mark Kiplagat Rotich – son.
- z. That Petitioners/Applicants obtained a grant of letters of administration intestate of the estate of Anna Chepchirchir Kiprotich on 28th January 2010 and was later confirmed on 14th February 2011.
- aa. That in the schedule of the certificate of confirmation of grant dated 14th February 2011, the following properties were listed as the free property of the late Anna Chepchirchir Kiprotich:
 - i. Land Parcel No. Eldoret Municipality Block 14/7.
 - ii. Land Parcel No. Kakamega/Sergoit/148.
 - iii. Land Parcel No. Nandi/Kiminda/736.
 - iv. Proceeds from Safaricom Ltd (Lease).
- ab. That the entire estate of Anna Chepchirchir Kiprotich devolved to Ignatius Kipkemei Rotich, Louis Kiprugut Rotich and Mark Kiplagat Rotich.



- ac. That the certificate of confirmation of grant confirmed by Justice George Dulu on 7th April 2005 under Succession Cause No. 193 of 2003, deprived Grace Chepkosgei Kiprotich, Ben Kimutai Rotich and David Kibet Rotich of the right to the enjoyment of their rights as such dependants of the Late Vincent Komurgor.
- ad. That I am advised by my advocates, whose advise I verily believe to be true, that Succession Cause No. 317 of 2009 relating to the estate of Anna Chepchirchir Kiprotich, the dependants are: Ignatius Kipkemei Rotich, Louis Kiprugut Rotich and Mark Kiplagat Rotich.
- ae. That I am advised by my advocates, whose advice I verily believe to be true, that under intestacy, the children of the deceased have a right to inherit from their parents irrespective of the circumstances of their birth.
- af. That the revocation of the certificate of confirmation of grant in Succession Cause No. 193 of 2003 was a procedural correction that did not diminish or alter our underlying legal claim to inherit from the deceased's estate, as those rights existed before and independent of the revoked certificate.
- ag. That from the foregoing paragraphs, the objectors/respondents are entitled to inherit under Succession Cause No. 193 of 2003 relating to the estate of Vincent Komurgor.
- ah. That the petitioners/applicants' prayer seeking a temporary injunction is fatally defective for lack of enabling provisions for the grant of a temporary injunction.
- ai. That the objectors/respondents have not been intermeddling with the estate of the deceased Vincent Komurgor but have been utilising it.
- aj. That as per the ruling delivered on 17th March 2014, Justice G.W. Ngenye-Macharia directed that the objectors/respondents shall till/cultivate/use Parcel Number Kakamega/Sergoit/148 and the same orders have never been varied or set aside.
- ak. That I am informed by my advocate that the petitioners/applicants, having made an application for equitable remedies must approach this court with clean hands which they have not, as they furthered the illegality perpetrated by the late Anna Chepchirchir Kiprotich who concealed from this Honourable Court that objectors/respondents are dependants of the late Vincent Komurgor.
- al. That the petitioners/applicants have not established a prima facie case against the objectors/respondents.
- am. That the petitioners/applicants will not suffer irreparable harm that cannot be compensated by damages if the order is not granted and the balance of convenience is in favour of the objectors/respondents.
- an. That Succession Cause No. 193 of 2003 and Succession Cause No. 317 of 2009 relate to similar properties originating from the Estate of Vincent Komurgor.
- ao. That the ruling dated 23rd December 2024 under succession cause No.193 of 2003 revoking the certificate of confirmation of grant dated 7th April 2005 made any subsequent grants to lack legs to stand on and therefore they stand revoked.
- ap. That I am advised by my advocates, whose advise I verily believe to be true, that this Honourable Court has the power to direct the Registrar of Land to rectify the entries made in



the Register of Land in respect of the subject properties and cancel the current titles and revert the properties to the Estate of the Late Vincent Komurgor.

- aq. That it is in the interest of justice that this Honourable Court recognises that objectors/respondents are dependants of the late Vincent Komurgor and should be able to enjoy our inheritance ex debito justitiae.
- ar. That this court should not condone the injustice and illegality perpetrated by the late Anna Chepchirchir Kiprotich and furthered by the Petitioners/Applicants herein.
- as. That I swear this affidavit in strong opposition to the application now before this Honourable Court and pray that the application be dismissed with costs to the objectors/respondents.

Petitioners' written submissions

- 4. The Petitioners filed written submissions to the application dated 22nd May, 2025 in which learned counsel Mr. Warigi submitted that the main issue for determination is whether the petitioners have met the threshold set for review of judgment/ruling delivered on 23rd December, 2024.
- 5. Learned Counsel started by highlighting the provisions of section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules. He equally cited the cases of Republic v. Public Procurement Administrative review Board & 2 others (2018) eKLR, Sader Mohammed v. Charan Singh Nand Sing and Another (1959) EA 793 where the High Court held that section 80 of the *Civil Procedure Act* conferred an unfettered discretion in the High Court to make such orders as it thinks fit on review and that the omission of any qualifying words in the section was deliberate.
- 6. Mr. Warigi submitted that in the present case, the petitioners have raised serious allegation which is the true position of the law. That the said grant was revoked is non-existent in the law. That the estate was fully administered and so there was nothing left to be revoked. Further that the said two succession files that is succession 317 of 2009 and 193 of 2003 were consolidated for the reason that they are intricately intertwined. Furthermore, the said two files were adversely mentioned including the proceedings and testimony of parties who had earlier testified.
- 7. Counsel submitted that it will be astonishing for the objectors to claim that the said files are different. That to be exact, the parties and properties in the two files are the same. He concluded that the petitioners have met the threshold to have the review and therefore the ruling delivered on 23rd December, 2025.
- 8. The second application was lodged by the objectors dated 19th June, 2025 expressed under the provisions of sections 1A, 1B, & 3A of the *Civil Procedure Act*, Order 45 Rule 1, Order 1 Rule 15, Order Rule 1 of the Civil Procedure Rules seeking orders as follows:
 - a. Spent
 - b. That the honourable court be pleased to review its directions and ruling issued on 11th June, 2025.
 - c. That pending the hearing and determination of this application the objectors/applicant be allowed to continue ploughing, tilling and utilizing 12 acres of the Soi farm being Land Parcel Number Kakamega/Sergoit/148.
 - d. The costs of this application be provided for.
- 9. The application is based on grounds that:



- a. That this Honourable Court vide its ruling and directions issued on 11th June 2025 issued various directions and orders on the disposition of the Petitioners application dated 22nd May 2025.
 - b. That the said ruling and orders were issued ex parte and without the input of the Objectors/ Applicant and in violation of their right to a fair hearing.
 - c. That the said ruling and directions were issued in High Court Succession Cause No.E317 of 2009 whereas the Petitioner's application dated 22nd May 2025 was made in Eldoret High Court Succession Cause No.E193 Of 2023 which denotes a manifest error on the face of the record since in that regard the orders were then made in the absence of an application.
 - d. That one of the orders issued on the said date were that the Area Chief and the Sub County Commissioner to ensure that no acts of trespass are committed by the Objectors.
 - e. That the said order was made without reference and taking into consideration that the Objectors have been enjoying interim orders allowing them to utilize 12 acres of the Soi Farm being Land Parcel Number Kakamega/Sergoit/148.
 - f. That the said order allowing the Objectors to utilize the parcel of land was issued by Hon. Lady Justice G.W Ngenye- Macharia on 20th February 2018 which was a court of competent jurisdiction.
 - g. That the said order still remains to be in force having never been challenged, reviewed or appealed by an appellate court and was meant to remain in force until the conclusion of this suit.
 - h. That the orders for utilization of the 12 acres of land were issued in High Court Succession case number No.317 of 2009, and not High Court Succession Cause No. 193 Of 2003.
 - i. That the objectors/Applicant have since planted maize on the parcel of land which is ripe for topdressing and needs further close monitoring and attention.
 - j. That unless this Honorable Court reviews its orders issued on 11th June 2025 there exists a risk of the crops wasting away or being invaded by unknown persons therefore occasioning monumental damage and substantial loss and damage to the Objectors/Applicant.
 - k. That the said utilization has been done in furtherance of court orders issued by a court of competent jurisdiction and as such there has been no intermeddling by the Objector/ Applicants.
 - l. That save for the utilization of the Soy property which is by a court order no other evidence of intermeddling has been given.
 - m. That it is therefore prudent that this Honorable Court reviews its orders issued on 11th June 2025 as there was an error of the face of record by this Honorable Court in issuing the said orders and directions.
10. In response to the application, the respondents through Louis M. Kiprugut who deposed as follows:
- a. That in response to paragraphs 3 and 4 of the supporting affidavit, it is indeed true that the Honourable Court issued orders on 11th June 2025. Further it is not true that the two files are different for the reason that they were consolidated and proceeded simultaneously.



- b. That in response to paragraph 5 of the supporting affidavit, it is not true that the orders were issued ex-parte and in fact during that day both Counsels made oral submission and the Court made a ruling based on the submissions.
- c. That in response to paragraphs 7, 8, 9 and 14 of the supporting affidavit, it is not also true that the alleged orders do exist and in fact the Objectors withdrew their applications so as to be allowed to file fresh application.
- d. That in further response of above, when they their summons for revocation dated 12th April 2024, the third prayer read that: "in the interim, the orders granted on 20th February, 2018 by G.W. Ngenye Macharia remain in force pending hearing and determination of suit.
- e. That equally, it is evident that the alleged orders were not in force at the time the said application was being made on 12th April 2024 for the reason that they were requesting for the said orders.
- f. That similarly, after 12th April 2024 no orders to the effect that the objectors were allowed to utilize our parcels of land as claimed in the said application.
- g. That in response to paragraph 10 of the supporting affidavit, the two files being intricately intertwined, and for accountability the said two files were consolidated.
- h. That in response to paragraphs 11, 12 and 13 of the supporting affidavit, some parties have been a nuisance to the said parcel forcefully without any right of color trespassed the said parcel and ploughed.
- i. That being the law-abiding citizen we are, the said acts were reported at the police station severally.
- j. That in response to paragraph 16 of the supporting affidavit, there is no error on the face of record in relation to the orders issued on 11th June 2025 and in fact the grant that was revoked is non-existent before the law.

Analysis and determination

11. Let me start by highlighting that this matter presents a unique challenge in succession law where scientific evidence has revealed the existence of previously unknown beneficiaries, but the estate they seek to inherit from has already been fully administered and transferred through a subsequent succession being Eldoret P&A No. 317 of 2009. When delivering the ruling dated 23rd December 2024, the central focus of the litigation was on establishing whether the objectors were indeed biological children of the deceased Vincent Komurgor. The proceedings were heavily centered on DNA testing and the credibility of expert witnesses, with the parties and the Court primarily concerned with resolving the fundamental question of biological relationships. In this context, the implications and progress of Succession Cause No. 317 of 2009 did not feature prominently in the analysis, and the Court may not have had the full benefit of considering how the complete administration of Vincent's estate through Anna's subsequent succession affects the practical remedies available to the newly recognized heirs. The central question now before this Court is whether the proper remedy lies in attempting to revive an already executed grant or in addressing the inheritance rights through the succession file where the assets currently reside.
12. Order 45 of the Civil Procedure Code sets out the parameters for an application for review as follows: -

“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 order made 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 which he applies for the review.

13. It then follows that Order 45 provides for three circumstances under which 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 not 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. The third ground for review is worded broadly; an application for review can be made for any other sufficient reason.

14. In *Paul Mwaniki vs National Hospital Insurance Fund Board of Management* [2020] eKLR the court stated:

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provisions of law cannot be a ground for review.”

The court went on to say: -

“The term ‘mistake or error apparent’ by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for purposes of Order 45 Rule 1 of the Civil Procedure Rules and Section 80 of the Act. Put it differently an order, decision, or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/



decision. The wisdom flowing from jurisprudence on this subject is that no error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it.”

15. By way of a brief background, the dispute originates from the death of Vincent Komurgor on 25th May 2003. His widow, Anna Chepchirchir Kiprotich, obtained letters of administration on 14th March 2005, confirmed on 7th April 2005 under Succession Cause No. 193 of 2003. In her application, she represented to this Court that the deceased was survived by only three dependants; her sons Ignatius Kipkemei Rotich, Louis M. Kiprugut Rotich, and Mark Kiplagat Rotich, who are now the Petitioners herein. The grant was duly executed, and Vincent's entire estate devolved to Anna.
16. When Anna died on 25th September 2009, her estate which by then included all of Vincent's former assets became the subject of Succession Cause No. 317 of 2009. Her three sons obtained letters of administration on 28th January 2010, confirmed on 14th February 2011. This succession was completed with the same properties that had originally belonged to Vincent now legally belonging to Anna's heirs.
17. The legal landscape changed drastically when Grace Chepkosgei Kiprotich, Ben Kimutai Rotich, and David Kibet Rotich (the current Objectors) emerged, claiming to be previously unknown children of Vincent Komurgor. They filed summons for revocation in December 2011, alleging that Anna had fraudulently concealed their existence when obtaining the original grant.
18. This Court, recognizing the fundamental importance of establishing biological relationships in succession matters, directed DNA testing through the Kenya Medical Research Institute. The results, delivered in August 2022, proved conclusively that Grace Chepkosgei Kiprotich and Ben Kimutai Rotich are indeed biological children of Vincent Komurgor, sharing genetic markers with the Petitioners at probability levels exceeding 99%.
19. Based on this scientific evidence and findings of fraudulent concealment, this Court delivered its ruling on 23rd December 2024, revoking the original grant issued to Anna Chepchirchir Kiprotich. The ruling correctly recognized that the grant had been obtained through material non-disclosure and that Grace and Ben were legitimate children who had been wrongfully excluded from their father's succession.
20. However, the Petitioners now seek review of this ruling, raising a fundamental legal question: what practical effect can revocation have when the estate has already been fully transferred and now forms part of a different succession? They argue that Vincent's assets had completely devolved to Anna, and upon her death, had passed to her heirs through Succession Cause No. 317 of 2009. In their view, there is nothing remaining in the original estate to be revoked or redistributed.
21. Therefore, as we stand, while the revocation was justified based on the DNA evidence and fraudulent concealment, the practical reality is that the objectors cannot inherit directly from Anna Chepchirchir, who was not their mother. They can only claim from their biological father Vincent, but his estate no longer exists as a separate entity it has been absorbed into Anna's estate and subsequently distributed to her heirs.
22. The proper legal remedy may therefore lie not in maintaining the revocation of an already executed grant, but in recognizing that the assets which originally belonged to Vincent are now part of Succession Cause No. 317 of 2009. The newly discovered children's inheritance rights could be vindicated by litigating Succession Cause No.317 of 2009 full circle and establish whether then the properties can get back to one basket and be redistributed to all the rightful beneficiaries. I say so because after looking at the twinned files, I have noted that in Succession Cause No. 317 of 2009 the same objectors herein lodged summons for revocation on 20th December, 2011 which has not been determined to finality.



23. In perusing file No. 317 of 2009, this court has established that there is a pending summons for revocation dated 20th December, 2011. From the record, there was an attempt to have the said summons struck out vide an application dated 19th October, 2021 for reasons that it was lodged based on forged identities. The court through its ruling dated 20th June, 2022 directed that a DNA be conducted and thereafter the application would be revisited.
24. This court then considered the said application issued directions on 11th June, 2025, which have been challenged by the Objectors vide their application dated 19th June, 2025.
25. I have given consideration to the objectors' application dated 19th June, 2025 challenging the directions issued on 11th June, 2025, and in my considered view, the objectors' challenge fails to appreciate the legal reality following the revocation of the grant in Succession Cause No. 193 of 2003. Once this grant was revoked on 23rd December 2024, there ceased to be any legally recognized estate or properties under that succession for distribution. The court was therefore not in error when it issued directions preventing acts of trespass on properties that now became part of the net estate of the deceased available for distribution.
26. The fundamental issue that requires resolution is not whether the revocation in Succession Cause No. 193 of 2003 was justified, the DNA evidence and findings of fraudulent concealment have settled that question. Rather, the core issue is how the legitimate inheritance rights of all of Vincent Komurgor's children can be vindicated given the current legal landscape.
27. Having carefully examined both files, it is clear that the proper forum for resolving the inheritance rights of all Vincent Komurgor's children is through the full litigation of Succession Cause No. 317 of 2009. This succession contains the actual assets that were originally Vincent's, which passed to Anna upon his death, and subsequently to Anna's heirs upon her death.
28. The pending summons for revocation dated 20th December, 2011 in Succession Cause No. 317 of 2009 filed by the same objectors herein presents the appropriate legal vehicle for addressing their claims. This summons challenges Anna's succession on the same grounds; that she fraudulently concealed the existence of Vincent's other children, thereby affecting the inheritance rights in the estate that ultimately devolved to her.
29. The review proceedings are not a form of an Appeal but it is a forum on dispute resolution which is strictly confined to the scope and ambit of Section 80 of the *Civil Procedure Act* as combined with Order 45 Rule 1 of the Civil Procedure Rules. The power of review may be exercised when some mistake or error apparent on the face of the record is found. But error on the face of the record must be such an error which must strike one on mere looking at the record and will not require any long drawn process of reasoning on the points where there may be conceivably by two opinions. It is trite law that the power of review envisaged under Section 80 of the CPA as read with Order 45 Rule 1 may not be exercised on the ground that the decision was erroneous on the merits. According to these statutory provisions the court can also exercise the power of review for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even a legal counsel retained by a litigant.
30. Applying the law laid down by this court in the aforesaid provisions, to the facts of the case at hand I am of the opinion in the present case, these two case dockets referenced as 193/2003 and 317 of 2009 I may be wrong or right in my perspective that parties litigating separately as if they are distinct causes of action on inheritance as occasioned some form of mistrial. As the court went about receiving admissibility evidence on matters arising in Succession Cause No. 193 of 2003 there was no clear view on the adjudication status of Succession Cause 317/2009. From the aforesaid observations, if one was to apply medical mythology these are Siamese twins file that severance of one from the other is likely to



deny the other the life cycle of litigation existence. Learned counsel Mr Warigi as strongly submitted on this issue and invited this court to rectify an error of fact and law occasioned by the last decision whose main contention was invocation of Section 76 of the Law of Succession Act by the objectors seeking leave of this court to admit scientific evidence of DNA so as to revoke the certificate of confirmation of grant in Succession Cause No. 193/2003. In the entire proceedings, fundamentally there was no reliance of material facts in Succession Cause No 317 of 2009 so as to bring to the for the chain of circumstances on inheritance which gave rise to these two case dockets open at different periods as if they were absolutely different intestate estate. Therefore, an order to rectify an error of law or fact must first address whether by doing so it will prevent the gross miscarriage of justice without first seeking the parties for additional evidence whether in case file 317 of 2009 the estate has been fully transmitted and a probate account submitted under Section 83 of the Act for purposes of discharging the administrators and liquidating the estate of the deceased. At the outset, it should be understood that the present exposition is not an attempt to define exhaustively what constitutes an error of law or an error of fact. Indeed, it has been said elsewhere in the jurisprudential philosophy that the man or a Judge for that matter who could succeed in such a definition would be a public enemy of the law. As far as adjudication of cases are concerned on the jurisdiction vested with the courts, under Section 80 of the CPA and Order 45 Rule one of the Civil Procedure Rules the purpose sought to be achieved is more modest. It is an attempt by the courts to illustrate some of those situations which may arise in the decision-making process and may require one to intervene and review the findings so made on the dispute at hand. Professor Dickinson in his book *Administrative Justice and the Supremacy of the law* (1927) at 55 delved into this issue when he remarked as follows: “Matters of law grow downward into roots of fact and matters of fact reach upward without break into matters of law. The knife of policy alone effects an artificial cleavage where the court chooses to draw the line.”

31. In so far as this matter is concerned, the litigating parties bear the duty of care to make the court understand where this knife of policy on review separates those situations between the legitimate beneficiaries and net estate in Succession Cause No 193 of 2003 and 317 of 2009 in which this court can be prepared to intervene to draw between findings of primary facts and findings of ultimate outcomes in the two causes of action. Whilst it is recognized from my reading of the two facts that the distinction between primary facts and inferences from those facts on the two case dockets is largely one of degree I dare say, it should not be pushed too far without some kind of additional evidence on the comprehensive probate account in Succession Cause No 317 of 2009. This litigation has a chequered history and the series of multiplicity of applications attest to these facts.
32. In light of the foregoing analysis there is need to bring finality to this long-standing dispute by making the following declarations:
 - a. That the Administrators in Succession Causes No 193 of 2003 & No 317 of 2009 under section 83 of the operative Act do submit a probate account to the court with details on the transmission of the assets of the estate, the beneficiaries, deaths and how the Administrator or Administrators have managed the estate with a view to establish whether there is any net estate capable of being distributed by this Court.
 - b. That a declaration be and is hereby made with regard to the interim preservation and conservatory orders touching on Succession Cause No 193 of 2003 with regard to land use rights be varied on the basis that the revocation order rendered all rights to the level of de novo. In so far as the estate is concerned, no Administrators have been appointed yet by this court.
 - c. That a call for additional evidence in clause (a) will inform the res of this long protracted intestate estate capable of invoking the jurisdiction of this court.



- d. That by dint of revocation of grant under section 76 of the *Law of Succession Act* in Succession Cause No 193 of 2003, it rendered the distribution a fresh start upon the Administrators submitting to the court a comprehensive probate account.
- e. That the probate accounts in Succession Causes No 193 of 2003 & No 317 of 2009 be submitted to this court latest 19th September 2025 when a status conference shall be held for the court to pronounce itself on this estate with finality.
- f. Each party shall bear its own costs.

DATED, SIGNED AND DELIVERED VIA EMAIL AT ELDORET ON THIS 8TH DAY OF AUGUST 2025

.....

R. NYAKUNDI

JUDGE

