

KENYA / JUDGMENT

In re Estate of Tabitha Kalondu Ngove (Deceased) [2026] KEHC 6821 (KLR)

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COURT

High Court

BEFORE

HK Chemitei

CASE / FILE NUMBER

Succession Cause 2712 of 2003

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In re Estate of Tabitha Kalondu Ngove (Deceased) (Succession Cause 2712 of 2003) [2026] KEHC 6821 (KLR) (Family) (21 May 2026) (Ruling)

Neutral citation:

[2026] KEHC 6821 (KLR)

Republic of Kenya

In the High Court at Nairobi (Milimani Law Courts)

Family

Succession Cause 2712 of 2003

HK Chemitei, J

May 21, 2026

IN THE MATTER THE ESTATE OF TABITHA KALONDU NGOVE (DECEASED)

Between

Caroline Mbinya Kathendu

1st Applicant

Kennedy Thyaka Ngove

2nd Applicant

Paul Matula Ngove

3rd Applicant

and

Petronilla Mutuku Makilya

1st Respondent

Winfred Katungwa Ngove

2nd Respondent

Ruling

1.This ruling relates to the applications dated 25th February, 2025, 9th June, 2025 and 22nd September, 2025.

2.The application dated 25th February, 2025 filed by the Applicant, Edward Kala Ngove is seeking for orders that:1.Spent.2.There be a stay of execution of the order of the Honourable Justice H.K Chemitei granted on 29th January, 2025 pending the hearing and determination of this application.3.This Honourable court be pleased to set aside the orders granted on 29th January, 2025 by Hon. H.K Chemitei.4.The 3rd Administrator/Applicant be granted leave to file a replying affidavit to the Applicants application dated 19th July, 2024.5.The costs of this Application be provided for.

3.The application is based on the grounds on its face and supported by affidavit sworn by Daniel Nyakundi on 25th February, 2025.

4.He avers inter alia that he is an Advocate of the High Court of Kenya and has conduct of the matter on behalf of the 3rd Administrator/Applicant. He stated that on 15th January 2025, he filed a notice of appointment to act for the 3rd Administrator and annexed a copy of the notice. He further averred that on 29th January, 2025, the court issued orders in the succession cause in the absence of the 3rd Administrator/Applicant.

5.According to him, the matter had been listed for hearing at 9:00 a.m., but the court session commenced earlier than usual at 8:30 a.m., which occasioned their absence when the matter was called out. The deponent explained that he logged into the virtual court session at 9:00 a.m. only to discover that the matter had already proceeded and orders had been issued. He maintained that the failure to attend court was neither deliberate nor intentional, but arose solely from the earlier commencement of the session. He therefore urged the court to set aside the ex parte orders issued on 29th January, 2025 and grant the Applicant an opportunity to respond to the Respondent's application on merit.

6.He further contended that it was in the interest of justice that the application be allowed, emphasizing that the Applicant was ready and willing to abide by any directions issued by the court. He concluded by affirming that the contents of the affidavit were true to the best of his knowledge, information and belief.

7.The annexures attached included the notice of appointment dated 16th January, 2025 and a copy of the court orders issued on 29th January, 2025 directing the Administrators to account for and deposit proceeds collected from various estate properties into a joint interest-earning account pending further directions of the court.

8.The application dated 9th June, 2025 filed by the Applicant, Kennedy Thyaka Ngove; seeks for orders that:1.Spent.2.Spent.3.This Honourable Court be pleased to review and set aside its ruling and orders of 28/5/2025 and hear the application dated 19/4/2024 on merit.4.The Honourable Court be pleased to reinstate the Applicant as a co-Administrator of the Estate Tabitha Kalondu Ngove (Deceased).5.The Honourable Court be pleased to grant the Applicants an additional period of 45 days or appropriate time to render full and accurate accounts as earlier ordered.6.The costs of this application be borne by the Estate.

9.The application is based on the grounds thereof and supported by affidavit sworn by Kennedy Thyaka Ngove on 9th June, 2025. He avers inter alia that on 28th January, 2025, the court issued ex parte orders directing the Administrators to render accounts within thirty days. He explained that by 28th May, 2025, his advocates sought an extension of time to enable them file complete and accurate accounts due to logistical difficulties and work-related pressures, but the request was not entertained by the court.

10.He maintained that he had acted in good faith and was not in contempt of court, asserting that the delay arose because he was actively engaged in farming and beekeeping activities which required time and attention. To support this contention, he annexed photographs depicting farming activities, livestock rearing, beekeeping structures, agricultural equipment, crops and homestead developments.

11.He further averred that filing inaccurate or incomplete accounts would have exposed him to legal liability, which he sought to avoid by requesting more time.

12.He complained that despite this explanation, the court proceeded to remove him and his co-Administrators and appointed the Respondents as the new Administrators without affording them an opportunity to be heard on merit. He alleged that the Respondents' advocates misrepresented facts to the court by claiming that the earlier orders contained a default clause permitting automatic removal of the Administrators upon non-compliance, whereas the order did not contain such a provision.

13.In support of this allegation, he annexed the impugned court order issued on 28th January, 2025 directing the Administrators to account for proceeds collected from various estate properties and businesses. He also contended that the Respondents, who had been appointed as Administrators, resided outside Kenya, with the 1st Respondent living in the United States and the 2nd Respondent residing in South Africa. He argued that their absence from the jurisdiction rendered them incapable of effectively administering an estate largely comprised of land and agricultural activities situated in Kenya.

14.To support this assertion, he annexed extracts of the Respondents' affidavit showing the foreign execution clauses. He further accused the Respondents of persistently frustrating the administration of the estate through numerous court applications and litigation, including Machakos ELC Case No. E047 of 2021 relating to estate property, which he viewed as part of a broader effort to remove the existing Administrators.

15.The Applicant maintained that changes to the administration of an estate were substantial matters that ought to be determined on the basis of cogent evidence and after a full hearing, rather than through procedural technicalities or dissatisfaction by some beneficiaries.

16.He characterized the Respondents' application as a backdoor attempt to alter the administration of the estate through unfair means, arguing that the orders issued prejudiced both his rights and those of other beneficiaries and exposed the estate to possible mismanagement and wastage. He therefore urged the court to review and set aside the impugned orders, contending that failure to do so would occasion grave injustice to the estate and its beneficiaries. He concluded by stating that the application had been filed promptly and in good faith.

17.The application dated 22nd September, 2025 filed by the Applicant, Caroline Mbinya Kathendu; seeks for orders that:1.Spent.2.Pending hearing and determination of this Application there be a stay of execution and/or implementation of the orders issued on 28/05/2025, removing the Applicant as an Administrator and appointing the Respondents.3.This Honourable court be pleased to review and set aside its ruling and consequential orders of 28/05/2025 and hear the application dated 19/04/2024 on merit.4.The Honourable Court be pleased to reinstate the Applicant as a Co-Administrator of the Estate of Tabitha Kalondu Ngove (Deceased).5.The Honourable Court be pleased to issue any other orders it deems just in the circumstances.6.Costs of the application and suit be provided for.

18.The application is opposed vide replying affidavit and further affidavit sworn by Caroline Mbinya Kathendu on 22nd September, 2025 and 28th October, 2025 respectively.

19.She avers inter alia that on 28th January, 2025, the court issued orders directing the Administrators to render accounts within thirty days. According to her, those orders were served upon the then advocates on record, Mutai Maina Kimeu Associates Advocates. However, she explained that the managing partner of that firm had since joined the Bench as a Resident Magistrate, necessitating the appointment of alternative advocates. She annexed a Notice of Change of Advocates to demonstrate that Kan Advocates LLP had properly come on record in place of the previous advocates.

20.The Applicant further averred that on 28th May, 2025, the court proceeded in her absence and without representation and issued orders removing her and her co-Administrators from the administration of the estate and replacing them with the Respondents. She annexed copies of the impugned orders and the rectified grant issued thereafter. She contended that the orders were obtained through material misrepresentation by counsel for the Respondents, who allegedly misled the court by asserting that the earlier orders contained a default clause permitting

automatic removal of the Administrators upon non-compliance, whereas no such clause existed in the original orders.

21. She also asserted that both Respondents resided outside the jurisdiction of the court, namely in the United States of America and the Republic of South Africa and only visited Kenya occasionally. In her view, this made them practically incapable of administering an estate predominantly comprised of immovable property situated in Kenya. She accused the Respondents and their agents of persistently interfering with the administration of the estate through litigation, threats of criminal investigations and involvement of police officers, thereby causing anxiety, confusion and disruption to the estate administration process.

22. She deponed that, upon legal advice from her advocates, changes in the administration of an estate were fundamental issues that ought to be heard substantively and determined on the basis of clear and cogent evidence rather than procedural technicalities or dissatisfaction by beneficiaries.

23. She further argued that the Respondents' application was a disguised attempt to wrest control of the estate through unfair practices, which would ultimately prejudice both the estate and the beneficiaries. She added that the court-appointed Administrators were now demanding direct remittance of proceeds from estate assets, thereby exposing the estate to risks of mismanagement and wastage. In support, she annexed correspondence issued by the Respondents' advocates to tenants and third parties directing them to remit rents and proceeds to the Respondents following the issuance of the rectified grant.

24. She further maintained that the Respondents had deliberately withheld material information from the court and thereby misled it into issuing orders prejudicial to her application. She urged the court to exercise its discretion judiciously and in the interests of justice by reviewing and setting aside the orders of 28th May, 2025.

25. She emphasized that the application had been brought without undue delay, that the Respondents would not suffer prejudice if the orders sought were granted and that the interests of justice, fairness, and proportionality required that the application be heard on merit.

26. The applications dated 25th February, 2025, 9th June, 2025 and 22nd September, 2025 are opposed vide replying affidavit sworn by Petronilla Mutuku Makilya aka Petronilla Mutuku Ngove on 6th October, 2025.

27. She avers inter alia that she is one of the current Administrators of the estate pursuant to the Further Rectified Grant of Letters of Administration issued on 28th May, 2025 jointly with Winfred Katungwa Ngove. She stated that she is a biological daughter of the deceased and therefore a dependant of the estate under Section 29 of the Law of Succession Act.

28. She asserted that the Applicants were former Administrators of the estate who had been lawfully removed by the court owing to their own misconduct and persistent failure to comply with court orders. She accused them of harboring ill motives driven by malice, hatred, bitterness and personal vendetta against her and the co-Administrator.

29. According to her, the Applicants had failed to attend court on the material dates despite having been properly served with hearing notices, summons and court orders. She further contended that the applications before court were incompetent, defective and a nullity because they had been filed by advocates who allegedly lacked proper authority after the previous advocates ceased acting when one of their partners joined the Bench as a magistrate.

30. She maintained that there was no court sitting on 29th January, 2025 as alleged by the Applicants and clarified that the impugned proceedings and orders were issued on 28th January, 2025 and 28th May, 2025 respectively.

31. She further argued that none of the Applicants had demonstrated any sufficient basis for review under Order 45 of the Civil Procedure Rules, such as discovery of new evidence, error apparent on the face of the record or any other sufficient cause.

32. In her view, the Applicants had also failed to demonstrate substantial loss or prejudice that would justify stay orders pending appeal. She emphasized that the former Administrators ceased to have authority over the estate upon issuance of the Further Rectified Grant on 28th May, 2025 and therefore lacked any lawful mandate to continue acting for the estate.

33. The Respondent further deponed that the Applicants had been properly served with the summons application dated 19th June, 2024 together with hearing notices through email and WhatsApp messages directed both to the advocates on record and to the Applicants personally. To support this assertion, she annexed affidavits of service, screenshots of WhatsApp communications, emails transmitting hearing notices and summons and copies of the relevant court orders. She maintained that despite being duly served, the Applicants never filed any replying affidavit or response to the summons seeking accounts of the estate and instead deliberately ignored the proceedings.

34. According to her, their continued failure to render accounts amounted to blatant disobedience of court orders and contempt of court. She also challenged the authenticity and evidentiary value of the annexures relied upon by Kennedy Thyaka Ngove, particularly photographs purporting to depict farming and beekeeping activities, arguing that they failed to comply with Section 106B of the Evidence Act regarding electronic evidence.

35. She accused the former Administrators of deliberately failing to collect and account for proceeds from estate assets despite being in exclusive control of those properties for many years. She further maintained that, as current Administrators, she and her co-Administrator had effectively taken over the administration of the estate, including payment of school fees and upkeep for one of the beneficiaries.

36.The deponent additionally argued that modern communication technology made it impossible for the Applicants to claim lack of notice or inability to attend proceedings, noting that service had been effected electronically and acknowledged through delivery receipts. She therefore contended that the applications were frivolous, malicious, vexatious and intended solely to delay administration and distribution of the estate.

37.In her view, the Applicants approached the court with unclean hands after repeatedly disobeying lawful court orders. She urged the court to dismiss all three applications with costs personally borne by the former Administrators, insisting that the orders of 28th May, 2025 were lawfully and properly issued after due process.

38.In her further affidavit, Caroline Mbinya Kathendu deposed that she was a daughter of the deceased and reiterated that the application for review had been filed promptly and was deserving of the court's intervention because she and the other former Administrators had been condemned unheard. She accused the Respondents of failing to disclose material facts to the court when obtaining the impugned orders.

39.She further outlined the surviving children of the deceased, identifying the beneficiaries of the estate and noting those who had since died. She explained that the Respondents had initially served as Administrators of the estate until 2016, when they were allegedly removed by the court for failure to properly administer the estate and because they were largely absent from the country. She stated that after their removal, administration was vested in herself, Kennedy Thyaka Ngove and Edward Kala alias Paul Matulai Ngove.

40.According to her, the Respondents thereafter persistently challenged their administration through proxies and continuous litigation, culminating in the applications seeking their removal as Administrators.

41.She identified the principal estate asset in dispute as Machakos Town/Block 11/283 which had been leased to Rubis Kenya at a monthly rental income of Kshs. 950,000/=. She averred that she and the former Administrators negotiated the current lease terms, which she described as more beneficial to the estate than the earlier arrangements favored by the Respondents.

42.However, following the court orders issued on 28th May, 2025, she stated that the 1st Respondent, through her advocates, demanded direct remittance of the rent from Rubis Kenya and thereafter began utilizing the rental income solely for herself while sporadically sending only Kshs. 5,000/= to her and two other siblings without explanation or accountability.

43.She further deposed that she and several beneficiaries were living in poverty despite the estate generating substantial rental income. She claimed that some beneficiaries' children had been sent home for lack of school fees and that some family members had been evicted from their homes due to financial hardship. She emphasized that the estate possessed income-generating assets capable of supporting the beneficiaries pending the final determination of the succession cause. She therefore urged the court to direct that the rental income from the suit property be shared equally among all beneficiaries, contending that no prejudice would be occasioned

because Rubis Kenya had occupied the premises for over thirty years.

44. She additionally noted that their deceased sister, Jacqueline Mumbe, had left behind a substantial hospital bill which required settlement by the estate since she neither married nor had children.

45. In conclusion, she maintained that equal distribution of the estate among all beneficiaries was the only practical solution capable of ending the prolonged litigation and preventing further wastage of estate resources. She asserted that granting the review orders sought would not prejudice the Respondents and would instead serve the interests of justice, fairness, and proportionality.

46. The Applicants have filed written submissions dated 12th November, 2025 and 25th November, 2025.

47. In the submissions filed on 12th November, 2025 by Caroline Mbinya Kathedu, she submitted that she had moved the court under certificate of urgency seeking stay of execution, review, setting aside of the ex parte orders issued on 28th May, 2025 and reinstatement as co-Administrator of the estate.

48. She further relied on a further affidavit dated 22nd October, 2025 and maintained that she had never been served with the application leading to the impugned orders. Counsel argued that the application for review had been filed promptly after she became aware of the orders through her brother Kennedy Ngove.

49. The Applicant framed the issues for determination as whether the application was meritorious, whether the ex parte ruling and consequential orders should be set aside and who should bear costs.

50. Her counsel relied on the Supreme Court decision in *Goldenlime International Limited v Bluesea Shopping Mall Limited & 3 Others* on the principles governing review of discretionary decisions, emphasizing that review is an equitable remedy available where a court has acted erroneously or occasioned injustice.

51. It was submitted that the Applicant's removal as Administrator without being heard constituted sufficient reason for review under Order 45 Rule 1 of the Civil Procedure Rules and violated Articles 47, 50 (1) and 159 (2) of the Constitution. She further argued that probate proceedings exist to facilitate orderly administration and distribution of estates and not to punish Administrators for alleged failures without due process.

52. It was contended that she had not been properly served with the summons application and was denied the opportunity to defend herself and other beneficiaries. Reliance was placed on authorities including *Patel v E.A. Handling Services Ltd*, *Tree Shade Motor Ltd v D.T. Dobie & Co. Ltd*, *Mania v Muriuki* and *Winnie Wambui Kibinge & 2 Others v Match Electricals Limited*, which emphasize the court's broad discretion to set aside ex parte orders in order to avoid injustice and ensure matters are heard on merit.

53. Her counsel urged the court to prioritize substantive justice over procedural lapses. It was also submitted that the estate comprised numerous income-generating assets requiring careful management and preparation of proper accounts under Section 83 of the Law of Succession Act. Her counsel pointed out that the Respondents had themselves previously served as Administrators until 2016, when they were removed for failure to administer the estate properly. She argued that since the Respondents reside outside Kenya, their continued appointment as sole Administrators was impractical and exposed the beneficiaries to the risk of disinheritance. The court was therefore urged to review and set aside the impugned ruling, reinstate the Applicant as Administrator, and award costs of the application to her.

54. In the submissions filed on 25th November, 2025 by Kennedy Thyaka Ngove, he submitted that the application dated 9th June, 2025 sought review of the orders issued on 28th May, 2025, which removed the former Administrators and replaced them with the Respondents. His counsel argued that the removal of the Applicant without affording him an opportunity to be heard violated the principles of natural justice and met the threshold for review under Order 45 Rule 1 of the Civil Procedure Rules.

55. Reliance was placed on Articles 47, 50 (1), and 159 (2) of the Constitution, emphasizing that the right to a fair hearing is fundamental and that succession proceedings should not be conducted in a punitive manner. The submissions cited authorities including *Judicial Service Commission v Mbalu Mutava & Another* and *Re Estate of Julius Ndubi Javan (Deceased)* for the proposition that probate proceedings are intended to facilitate proper administration of estates rather than punish Administrators without due process.

56. The Applicant further contended that he had acted in good faith by requesting a short extension of time to prepare accurate accounts, arguing that the estate was extensive and that inaccurate accounts could expose him to legal liability. His counsel urged the court to prioritize substantive justice over procedural technicalities and to exercise discretion compassionately.

57. It was further submitted that the Respondents, who had been appointed as Administrators, resided outside Kenya and therefore lacked the practical ability to manage the estate effectively, particularly because the estate comprised farmland and immovable property requiring physical oversight and day-to-day management.

58. Authorities such as *Re Estate of Gakunga Njoroge (Deceased)* and *Re Estate of Juma Shabani (Deceased)* were cited to support the argument that estate administration requires resident Administrators capable of personally carrying out statutory duties under Section 83 of the Law of Succession Act.

59. The submissions emphasized that the removal of resident Administrators in favour of absentee Administrators exposed the estate to risks of mismanagement and undermined the interests of beneficiaries. His counsel argued that administration of the estate should be grounded in equity, collective responsibility and practical considerations under Section 66 of the Law of Succession Act.

60.It was further argued that the orders of 28th January, 2025 directly affected the Applicant and should not have been issued in his absence. The court was urged to consider the prolonged history of the succession cause, which had been pending for over twenty-two years, and to adopt a conciliatory and fair approach that would prevent further hostility among family members. Ultimately, he prayed for reinstatement as Administrator and for review of the orders issued on 28th May, 2025.

61.The Respondent has filed written submissions dated 13th October, 2025. In their written submissions, the current Administrators, Petronilla Mutuku Makilya alias Petronilla Mutuku Ngove and Winfred Katungwa Ngove, opposed the three applications filed by Edward Kala Ngove alias Paul Matulai Ngove, Kennedy Thyaka Ngove and Caroline Mbinya Kathendu.

62.They submitted that all the applications stemmed from a single grievance, namely the lawful removal of the former Administrators through the court orders issued on 28th May, 2025. Their counsel argued that if the Applicants were dissatisfied with those orders, their proper recourse lay in an appeal to the Court of Appeal rather than review proceedings before the same court.

63.It was emphasized that no notice of appeal had been filed and that the orders of 28th May, 2025 remained valid and binding. The Administrators further submitted that none of the applications met the threshold for review under Order 45 Rule 1 of the Civil Procedure Rules.

64.According to counsel, the Applicants had failed to demonstrate discovery of new and important evidence, any error apparent on the face of the record or any sufficient reason warranting review of the court's orders. It was argued that a Further Rectified Grant had already been issued to the current Administrators on 28th May, 2025 and no beneficiary had complained about their administration of the estate since their appointment.

65.Counsel maintained that the Applicants merely sought reinstatement as Administrators through the back door out of a mistaken belief that they were entitled to remain Administrators permanently.

66.The submissions also challenged the competency of the applications. Counsel contended that probate matters ought to be initiated by summons rather than notices of motion and argued that the application by Edward Kala Ngove alias Paul Matulai Ngove was incompetent because it had been filed by advocates who were allegedly not properly on record, no notice of change of advocates having been filed.

67.The Administrators further pointed out that there had been no court sitting on 29th January, 2025 and therefore no orders issued on that date, contrary to some of the Applicants' assertions. They maintained that the Applicants had not demonstrated any basis for stay orders since no appeal had been filed and no substantial loss had been shown. The current Administrators emphasized that the Applicants had ceased being personal representatives of the estate upon issuance of the Further Rectified Grant and therefore lacked legal authority to act on behalf of the estate.

68.Their counsel submitted that the estate could not exist in a vacuum and that continuity of administration required issuance of a new grant after removal of the former Administrators. They further maintained that the Applicants and their advocates had been duly served with the summons application dated 19th June, 2024, hearing notices, penal notices and court orders through email and WhatsApp communications as evidenced by the affidavits of service annexed to the replying affidavit.

69.According to counsel, despite such service, none of the Applicants filed any replying affidavit, response or accounts as ordered by the court. Counsel argued that the Applicants' continued failure to render accounts amounted to deliberate disobedience of lawful court orders and contempt of court.

70.The submissions described the applications as being founded on malice, falsehoods, bitterness and bad faith rather than pursuit of justice for beneficiaries. The Administrators also challenged the admissibility of the photographic evidence annexed by Kennedy Thyaka Ngove, arguing that it offended Section 106B of the Evidence Act for lack of certification relating to electronic evidence.

71.Further, counsel submitted that the Applicants' claims regarding inability of the current Administrators to manage the estate while abroad were misplaced because modern technology and digitization enabled remote administration of estates, including virtual court appearances, online banking and electronic processing of documents. The Administrators maintained that no evidence had been presented to show that they were unfit or incapable of administering the estate. On the contrary, they asserted that they had already begun collecting estate assets, managing the estate responsibly and preparing for distribution to beneficiaries.

72.They further argued that the Applicants had been afforded ample opportunity to comply with court orders but failed to do so and therefore could not claim to have been condemned unheard.

73.In conclusion, their counsel invoked equitable principles, particularly the doctrine that one who seeks equity must come with clean hands and submitted that the applications had been overtaken by events due to the issuance of the Further Rectified Grant. The court was therefore urged to dismiss all three applications with costs personally payable by the former Administrators.

Analysis and Determination

74.I have gone through the applications, the responses thereto and the rival submissions.

75.The principles governing review are settled under Order 45 Rule 1 of the Civil Procedure Rules to wit that review jurisdiction is confined to instances of discovery of new evidence, an error apparent on the face of the record, or other sufficient reason. This court must therefore determine whether the Applicant has demonstrated any self-evident error or omission warranting interference with the impugned orders, or whether the grievances raised merely challenge the merits of that decision and are therefore matters for appeal.

76.The guiding principles on reviews were well settled in Civil Appeal No. 2111 of 1996, *National Bank of Kenya vs Ndungu Njau*, where the Court of Appeal held that: “...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 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 proceed on an incorrect expansion of the law...”

77.The Applicants’ principal complaint is that they were condemned unheard and removed as Administrators without being afforded a fair opportunity to respond to the summons seeking accounts. They further contend that the Respondents misrepresented to the court that the orders issued on 28th January, 2025 contained a default clause permitting automatic removal of the former Administrators upon non-compliance. The Applicants also challenge the practicality of the Respondents administering the estate while residing outside Kenya.

78.Conversely, the Respondents maintain that the Applicants were duly served with the summons application dated 19th June, 2024, hearing notices, penal notices and court orders through both electronic mail and WhatsApp communication, but nevertheless failed to render accounts or file any substantive response despite repeated opportunities granted by the court.

79.On 28th January, 2025, this court allowed the application dated 9th June, 2024 in terms of prayer 2 thereof pending interpartes hearing and notice to issue. Prayer 2 of the said application was that pending the hearing and determination of this application, there be a stay of execution and/or implementation of the orders issued on 28/5/2025 removing the Applicant as Administrator and appointing the Respondents.

80.The Court record and annexed affidavits of service demonstrate that the Applicants and their advocates were served with the summons application and the subsequent orders requiring them to render accounts within thirty days. The Applicants have not denied receipt of the electronic communications, but instead attribute their non-compliance to inadvertence, logistical constraints, work commitments, transition of advocates and misunderstanding regarding the hearing dates.

81.Significantly however, none of the Applicants annexed draft accounts, bank statements, estate schedules or any substantive attempt at compliance with the court’s orders. Their applications largely seek reinstatement as Administrators while explaining why accounts were not rendered.

82.In succession matters, Administrators occupy fiduciary positions and are under a statutory obligation pursuant to Section 83 of the Law of Succession Act to render accurate accounts to the court and beneficiaries. Failure to account for estate income and assets, particularly after express court orders and penal notices, amounts to serious dereliction of duty.

83.The grievances advanced by the Applicants essentially challenge the correctness and merits of the orders issued on 28th May, 2025 removing them as Administrators and appointing the Respondents. Whether the court exercised discretion properly, whether additional time ought to

have been granted and whether the Respondents are better suited to administer the estate are matters that invite reconsideration of the merits of the impugned decision. Such issues do not constitute errors apparent on the face of the record within the meaning of Order 45 Rule 1 of the Civil Procedure Rules.

84.As stated in *National Bank of Kenya Ltd v Ndungu Njau* (supra), review is not an avenue for re-arguing a matter or persuading the court to take a different view of the evidence or law. The Applicants have not demonstrated discovery of any new and important evidence which was unavailable at the time the impugned orders were made, nor have they pointed to any self-evident error or omission warranting review. Their dissatisfaction properly falls within the province of an appeal and not review proceedings.

85.I also take judicial notice of the fact that a Further Rectified Grant of Letters of Administration has already been issued appointing the current Administrators. The estate cannot be left in an administrative vacuum. The Applicants have not demonstrated that the Respondents are legally disqualified or incapable of administering the estate merely because they reside outside Kenya. Modern technological advancements, virtual court sessions, electronic banking systems and digitized land and corporate processes substantially diminish the logistical impediments previously associated with remote administration.

86.Further, the Applicants themselves failed to demonstrate diligence and transparency in administration despite having been entrusted with the estate for a considerable period. Equity aids the vigilant and not those who sleep on their obligations. The Applicants approached the court seeking equitable relief while remaining in persistent default of lawful court orders requiring them to account.

87.In the premises, I find that the Applicants have failed to satisfy the threshold for review under Order 45 Rule 1 of the Civil Procedure Rules. They have not established discovery of new evidence, any error apparent on the face of the record or any other sufficient cause warranting interference with the orders issued on 28th May, 2025.

88.Consequently, the applications dated 25th February, 2025, 9th June, 2025 and 22nd September, 2025 are hereby dismissed for lack of merit.

89.Each party to bear its own costs.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 21ST DAY OF MAY 2026.H
K CHEMITEIJUDGE

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