



REPUBLIC OF KENYA



In re Estate of James Njenga Kinuthia (Deceased) (Succession Cause 148 of 2017) [2023] KEHC 1083 (KLR) (23 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1083 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 148 OF 2017
MM KASANGO, J
FEBRUARY 23, 2023**

**N THE MATTER OF THE ESTATE OF JAMES NJENGA KINUTHIA
(DECEASED)**

RULING

1. Justice C. Meoli by a Ruling dated May 13, 2021 confirmed the grant issued to Charles Kariuk Njenga and Anne Muthoni Njenga, both son and daughter of the deceased. In confirming the grant, the court distributed the deceased's estate. Justice Meoli in that Ruling made a finding that there was no evidence before court to support the assertion that some of the deceased's properties were developed. The learned judge proceeded to distribute the estate of the deceased relying on the size of the immovable properties.
2. Charles and Catherine, Njoki Njenga were aggrieved by the distribution of one property to the deceased's child born out of wedlock (hereafter the Child). Charles and Catherine therefore filed an application dated September 14, 2021 seeking review of the orders of Justice Meoli. Justice Meoli was transferred from Kiambu High Court and accordingly, the application is before me for determination.
3. Order 45 Rule 1 of the [Civil Procedure Rules](#) is in the following terms:-

- “(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.”

4. The affidavit in support of the application sworn by Charles, does not reveal discovery of new and important evidence nor does it show there was mistake or error apparent on the face of the record.
5. Charles and Catherine seek that property Muguga/Kanyiriri/521 be distributed to them and not to the child on the grounds they reside on that property and consequently carried out development thereof and also did landscaping.
6. I have considered the affidavit evidence of both Charles and the mother of the child and I find the application fails to meet the threshold of a revision application. Justice Meoli made a finding of fact that the deceased’s properties were not developed. Charles did not appeal that finding of fact but rather now seeks this review. In my view the application is one which is disguised as revision but indeed an appeal. In this regard, I wish to rely on the case *Republic v Public Procurement Administrative Review Board & 2 others* (2018) eKLR as follows:-

“13. It is also important to distinguish grounds of appeal and grounds for review. Guidance can be obtained from the case of *National Bank of Kenya Ltd v Ndungu Njau* where the court held:-

“In my discernment, an order cannot be reviewed because it is shown that the judge decided the matter on a foundation of incorrect procedure and or that his decision revealed a misapprehension of the law, or that he exercised his discretion wrongly in the case. Much less could it be reviewed on the ground that the other judges of coordinate jurisdiction and even the judge whose order is sought to be reviewed have subsequently arrived at different decisions on the same issue? In my opinion the proper way to correct a judge’s alleged misapprehension of the procedure or the substantive law or his alleged wrongful exercise of discretion is to appeal the decision unless the error be apparent on the face of the record and therefore requires no elaborate argument to expose.”(Emphasis added).

14. In *Abasi Belinda v Fredrick Kangwamu and another* the Court held that:-

‘a point which may be a good ground of appeal may not be a good ground for review and an erroneous view of evidence or law is not a ground for review though it may be a good ground for appeal’.”

7. In summation of the above determinations of this court and the affidavit evidence, I find the application dated September 14, 2021 is unmerited.

Disposition

8. Accordingly, having made the above determination, the application dated September 14, 2021 is dismissed. Each party shall bear their own costs.

RULING DATED AND DELIVERED AT KIAMBU THIS 23RD DAY OF FEBRUARY, 2023.

MARY KASANGO



JUDGE

Coram:

Court Assistant: Mourice /Julia

For Charles Kairuki and Catherin Njoki:- Mr. Otieno

For AMN (the Child) Ms. Nzilani Nganga

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE

