



**In re Estate of Simion Robi Maroa (Deceased) (Succession Cause
14 of 2018) [2023] KEHC 22781 (KLR) (26 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22781 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
SUCCESSION CAUSE 14 OF 2018
RPV WENDOH, J
SEPTEMBER 26, 2023**

IN THE MATTER OF THE ESTATE OF SIMION ROBI MAROA - (DECEASED)

BETWEEN

ESTHER BOSIBORI MINYONGA 1ST PETITIONER

KEFA OKETCHI MOINDE 2ND PETITIONER

AND

GRACE KEMUNTO ROBI OBJECTOR

RULING

1. The applicant, Grace Kemunto Robi filed this Summons for Review of Court Orders dated August 27, 2022. The applicant seeks the following orders:-
 1. Spent.
 2. That this court be pleased to review, vary, rescind and/or set aside the orders made on July 27, 2022 which orders are at variance with the pleadings and submissions lodged by the parties and therefore contravenes the doctrine of departure.
 3. Consequent to prayer 3 being granted, the court be pleased to proceed with partial confirmation of grant issued to the petitioners/respondents on August 18, 2016 and February 7, 2020 and distribute the estate of the deceased with respect to L R No Bukira/ Buhirimonono/1531 in terms of the schedule/scheme of distribution dated September 17, 2021 and annexed to the summons for confirmation of grant dated on even date but lodged in court on October 19, 2021 which property is not contested by the parties.
 4. Costs of the application be borne by the petitioners/respondents.
 5. Such further orders be made as this court may deem fit and expedient.



2. The grounds in support of the application are on the face of the application and the supporting affidavit of Grace Kemunto Robi. In relation to the grounds for review, the applicant deposed that the properties to be distributed in the estate of the deceased were L R Bukira/Buhirimono/1531 & 2023; that by a ruling dated July 27, 2022, this court found that the suit land number L R Bukira/Buhirimono/2023 was not free property capable of being distributed; that the applicant was directed to file fresh summons for confirmation of grant in respect to the uncontested property being L R Bukira/Buhirimono/1531; that the court was instead obliged to proceed to partially confirm the grant with respect to L R Bukira/Buhirimono/1531; that by ordering the applicant to file fresh summons in respect of the property that was not contested, the court was in error; that having issued the orders of February 7, 2020, this court could not have sat on appeal and issued orders for filing fresh summons for confirmation of grant.
3. The applicant further deposed that the orders of July 27, 2022 will subject her to incurring more costs and time for filing and hearing fresh summons for confirmation of grant; that there exists sufficient basis to warrant review and/or vacation of the impugned order; that unless the orders are vacated, the applicant is likely to suffer undue prejudice of being frustrated by strangers in administration of the estate of the deceased contrary to the provisions of Section 66 of the *Law of Succession Act*.
4. The application was opposed. Esther Bosibori Miyonga filed a replying affidavit dated October 31, 2022. She deposed that Ongondo J in Migori ELC Case No 889 of 2017, held that L R Bukira/Buhirimono/2023 was fraudulently transferred and subdivided and therefore it does not constitute free property; that this court on July 27, 2022 held that L R Bukira/Buhirimono/2023 was the subject of ongoing litigation vide Migori ELC No 34 of 2019 and proceeded to order that the applicant files fresh summons of grant in respect to the uncontested suit property; that the attempt to review the orders is an abuse of the court process; that the applicant has not demonstrated that the application meets the threshold for an application for review as envisaged in the provisions of Order 45 (1) (b) of the *Civil Procedure Rules* and it ought to be dismissed; that the applicants will not suffer prejudice since the court ordered that she files application for partial confirmation amongst the beneficiaries leaving out the uncontested property.
5. The application was canvassed by way of written submissions. Both parties complied and I have duly considered the application and submissions.
6. The main issue for determination is whether the applicant has made out a case for review of this court's orders issued vide a ruling dated 27/7/2022.
7. Section 80 of the *Civil Procedure Act* allows a party who is aggrieved by a judgement to apply to the court for review. Order 45 Rules (1) and (2) of the Civil Procedure Rules sets out the grounds upon which an application for review will be founded. They are as follows: -
 - a. A decree in which no appeal is allowed;
 - b. There is discovery of new and important matter which after exercise of due diligence was not within the applicant's knowledge;
 - c. There was a mistake or an apparent error on the face of the record;
 - d. There are other sufficient reasons;
 - e. The application must be made without unreasonable delay.
8. The applicant's application is grounded on the ground that there was a mistake error apparent on the face of the record.



9. The applicant contended that this court should have proceeded with the partial confirmation of the grant pursuant to Rule 41 of the *Probate and Administration Rules*. The applicant stated that having issued and/or given directions on February 7, 2020, this court could not constitute itself as an appellate court and issue fresh summons for confirmation of grant to be lodged on the uncontested free property.
10. There is no dispute between the parties that L R No Bukira/Buhirimono 2023 is not a free property and cannot be subject to succession proceedings. The only property which can be distributed is L R No Bukira/Buhirimono 1531. As a recap, the ruling and the subsequent orders of this court dated July 27, 2022 were as a result of the protest proceedings by the respondents against the applicant's application for summons for confirmation of grant dated September 17, 2021.
11. Turning to the orders issued on July 7, 2020, this court in the ruling of July 27, 2020 extensively considered the consequences of the orders issued in the ruling of July 7, 2020. To reiterate the position this court took, the orders of July 7, 2020 found that the grant of letters of administration intestate dated August 18, 2016 was in accordance with the law. The grant of letters of administration dated August 18, 2016 is being held jointly in the names of Esther Bosibori Miyonga and Kefa Oketchi Moinde the respondents herein. This position has not changed and they only remain to be confirmed.
12. The orders of July 7, 2020 directed that the summons for confirmation of grant dated March 15, 2017 be heard afresh. The application dated March 15, 2017 for the confirmation of the grant issued on August 18, 2016 which the applicant is now referring to, was filed before the High Court in Nyamira Succession Cause No 127 of 2012 by the protestors/respondents. They sought confirmation of the letters of administration issued to them on 18/8/2016 as beneficiaries of the estate of the deceased, of the contested suit land L R No Bukira/Buhirimono 2023.
13. The applicant herein filed her own independent summons for confirmation of grant dated September 17, 2021 which was the subject of the ruling and orders of July 27, 2022. Upon hearing the parties and the protest proceedings, this court found that the protest proceedings are merited and subsequently dismissed the summons for confirmation of grant dated September 17, 2021. This begs several questions, why did the applicant choose to file her own summons for confirmation of grant dated September 17, 2021 and not pursue the application dated March 15, 2017 which she now wants the court to do; how does the applicant expect this court to proceed with confirmation of grant with no existing application on record or alternatively use the summons for confirmation dated March 15, 2017 filed by the protestors in this cause to confirm a grant in her favour? The application dated March 15, 2017 only asked the court to confirm the grant in respect to the respondents' share in L R No Bukira/Buhirimono 2023. There is no mention of how L R. No. Bukira/Buhirimono 1531 was to be distributed. I do not think the proposition being made by the applicant makes sense.
14. It is after finding that the summons for confirmation of grant dated September 17, 2021 is not merited, this court allowed the applicant to file fresh summons to enable this court to proceed with partial confirmation of the grant on the uncontested property. Rule 41 of the Probate and Administration Rules, which the applicant has referred to, gives an elaborate procedure on how hearing of an application for confirmation should be done. If there is no existing application for confirmation of grant on record, the court cannot proceed to confirm without one.
15. Section 71 (1) (d) of the *Law of Succession Act* provides that in cases of intestacy as herein, the court has to be satisfied on the respective identities and shares of all persons beneficially entitled to before proceeding with confirmation of the grant. There being no existing application on record which shows what all the parties were entitled to and their respective shares in the uncontested portion of the estate of the deceased, there is nothing which the court can proceed to confirm.



16. The foregone position is that the applicant has not established that this court made an error and/or mistake apparent on the face of the court's record to warrant review of its orders delivered on July 27, 2022.
17. The application dated August 27, 2022 is devoid of merit and the same is hereby dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED AT MIGORI THIS 26TH DAY OF SEPTEMBER, 2023

R. WENDOH

JUDGE

Ruling delivered in the presence of;

Mr. Mulisa for the Objectors/Applicant

Mr. Kerianki for the 1st and 2nd Respondents

Emma Court Assistant.

