



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 2 OF 2018**

**IN THE MATTER OF THE ESTATE OF SAVERIO MAKOKHA MUSUMBA (DECEASED)**

**RULING**

1. On 6<sup>th</sup> August 2021, I delivered a judgment herein, where I ordered distribution of the estate herein and confirmed the grant.
2. An application has now been brought by the Kakamega County People with Disability organization, dated 12<sup>th</sup> October 2021, on behalf of Sylvester Ojwang Makokha. I shall refer to the organization hereafter as the applicant. The application principally seeks that a property, Kakamega Town Block 2/213, which I had allocated to the second house of the deceased, to which the said Sylvester Ojwang Makokha belongs, be awarded to the said Sylvester Ojwang Makokha, on the basis that the other members of that house were benefitting from the other assets of the estate of their late parents.
3. The matter was placed before me on 13<sup>th</sup> October 2021, and I directed that the same be served. The same was served, and there is an affidavit on record in response, by James Musumba Makokha, the administrator representing the second house. It is the only response to the application. It is not surprising as the matter is limited to issues within the second house. In that response, the administrator opposes the application. He avers that there is no proof that Sylvester Ojwang Makokha had been neglected. It is further averred that the court has already distributed the estate, and the family was in the process of implementing those orders. It is further stated that the applicant participated in the confirmation hearings, which culminated in the orders of 6<sup>th</sup> August 2021 on distribution, yet the organization has not appealed or sought review of the said orders. It is asserted that Sylvester Ojwang Makokha has been fairly catered for in the distribution ordered by the court.
4. Once a court pronounces itself on a matter, parties who are not satisfied with the outcome have two options. One, is to appeal against the said decision, at a higher court, in this case it would be the Court of Appeal. Two, to seek review of the decision, in the cause where the decision was made before the judicial officer who made the order, in this case it would be before the High Court, and specifically the review application should come to me as the judicial officer who made the decision that the applicant is aggrieved about
5. From the record before me, it is clear that the applicant has not filed an appeal against the judgment of 6<sup>th</sup> August 2021. I have not seen a copy of a notice of appeal, nor of a request for certified copies of the proceedings and judgment to facilitate the appeal.
6. The application before me, dated 12<sup>th</sup> October 2021, does not purport to be an application for review. Review is sought where there are errors apparent on the face of the record, or where the applicant has stumbled upon or discovered important evidence which was not available when the decision was being made and which it could not obtain before then. There is also the general ground, other sufficient reasons for review. The application before me does not purport to be seeking to correct an error on the face of the record, nor to place on record evidence that has just been discovered, nor is it founded on other sufficient reason.
7. I note though that it is brought by a lay organization, and there could be justification that it does not have knowledge of what ought to be raised in a review application. I can only revisit my own orders on review or where I am being asked to set them aside on account of some irregularity or impropriety. What is before me is more of a plea for review, and I shall treat it as such, and I shall, therefore, consider the application on its merits on the presumption that it is for review.
8. On whether I should review my decision on account of an error apparent on the face of the record, I have carefully scrutinized the affidavit sworn in support of the application, by Boniface Anjeche, on 12<sup>th</sup> October 2021. The same does not point out any error on the face of the judgment of 6<sup>th</sup> August 2021, to warrant a review of the orders made in that judgment, with respect to the devolution to the second house, and more specifically with respect to Sylvester Ojwang Makokha. On discovery of new important evidence, which was not available at the time I made the decision, I have again scrupulously perused the supporting affidavit, and I have not come across any new material that the applicant discovered after the judgment was delivered. The material adduced in the affidavit is nothing new. It was the subject of previous affidavits by the deponent, and he gave oral testimony founded on those same facts. On other sufficient reasons, again, I have not seen any. The issues raised in the affidavit are not new. They were canvassed at the oral hearing of the confirmation application, and, if the applicant was not satisfied with how I dealt with them in the judgment, then the option open to it is to appeal against the judgment of 6<sup>th</sup> August 2021.

9. Overall, I find no merit in the application dated 12<sup>th</sup> October 2021, and I hereby dismiss the same. As this is a family matter, and given that Sylvester Ojwang Makokha is a person living with disability, I shall make no orders on costs. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 30<sup>th</sup> DAY OF March 2022**

**W. MUSYOKA**

**JUDGE**

**Mr. Erick Zalo, Court Assistant.**

**Boniface Oremo, from the Kakamega County People with Disability organization, the applicant**

**Mr. Amasakha, instructed by Messrs. Amasakha & Company, Advocates, for James Musumba Makokha.**

**Mr. Nyikuli, instructed by Nyikuli Shifwoka & Company, Advocates, for Kennedy Kwerakho Makokha.**

**Mr. Shivega, instructed by Victor Shivega & Company, Advocate, for Violet Adongo Makokha.**

**Mr. Nandwa, instructed by Messrs. Nandwa & Company, Advocates, for Peter Rakama.**

**Ms. Wilunda, instructed by Ms. EA Wilunda & Company, Advocates, for Benjamin Musumba Makokha.**

**Ruth Mutende Watsiera, in person.**