



**In re Estate of Godwin Perminahs Mugwere (Deceased) (Succession Cause 1541 of 2014) [2022] KEHC 3031 (KLR) (Family) (22 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 3031 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY**

**SUCCESSION CAUSE 1541 OF 2014**

**MA ODERO, J**

**APRIL 22, 2022**

**LUCY N MUGWERE.....PETITIONER/APPLICANT**

**VERSUS**

**JOHN MURUTU MUGWERE.....1ST RESPONDENT**

**ANNE MUGURE MUGWERE AGIMBA.....2ND RESPONDENT**

**CHRISTINE WATHUA MUGWERE.....3RD RESPONDENT**

**BETWEEN**

**LUCY N MUGWERE ..... PETITIONER**

**AND**

**JOHN MURUTU MUGWERE ..... 1<sup>ST</sup> RESPONDENT**

**ANNE MUGURE MUGWERE AGIMBA ..... 2<sup>ND</sup> RESPONDENT**

**CHRISTINE WATHUA MUGWERE ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Before this Court for determination is the Notice of Motion dated 18<sup>th</sup> November 2020 by which the Respondents seeks the following orders:-

“ 1. Spent.

2. That the court be pleased to review and vary its ruling which was issued on 15<sup>th</sup> October 2020, as the prayers being sought by the Applicant have been overtaken by events.

3. That the Respondents be awarded costs of this application.”



2. The Application was premised upon Section 80, 63 (e) and 3A of the *Civil Procedure Act* (Cap 21) and Order 45 Rule 1 of the *Civil Procedure Rules* and all other enabling provisions of law and was supported by the Affidavit of even date sworn by Anne Mugure Mugwere Agimba who was the 2<sup>nd</sup> Respondent.
3. The court directed that the matter be canvassed by way of written submissions. The Respondents filed the written submissions dated 9<sup>th</sup> December 2021. Counsel for the Applicants who was present on 25<sup>th</sup> November 2021 when directions were given did not file any written submissions.

## **Background**

4. Vide an application dated 25<sup>th</sup> February 2020 the Applicant had sought the following reliefs:-
  - “ 1. That this application be certified urgent and service of this application be dispensed with in the first instance.
  2. That the Honorable court be pealed to grant an order compelling the advocates, Agimba & Co. Advocates to render a true account of the sale proceeds of the sale of Title Number Nairobi Block 32/325 and any other legal work undertaken to prevent further wastage of the estate of the deceased.
  3. That the firm of Agimba & Co. Advocates having not undertaken sub-division of the properties of the estate as ordered by the court on 19<sup>th</sup> October, 2019 and the 90 days time period having lapsed, the court be pealed to order that the District Surveyor, Kajiado North District does undertake the subdivision of Title Number Ngong/Ngong/2078 as per his attached invoice and proposed subdivision plan.
  4. That costs of this application be costs in the cause.”
5. The said application was not opposed and Hon Lady Justice Ali-Aroni in her Ruling dated 15<sup>th</sup> October 2020 allowed prayer (2) and (3) of the application.
6. The Respondent then filed this present application seeking to have the orders made by the court on 15<sup>th</sup> October 2020 reviewed. The Respondents averred that the property known as Ngong/ngong/2078 (herein after the ‘suit property’) is currently being surveyed and sub divided in favour of all he beneficiaries in equal proportions. That the said process is at an advanced stage.
7. The Respondents further aver that the requirement for Statements of Account involving the sale of LR No Nairobi/block/235 Golf Course was dispensed with after the Applicant received her sale of the proceeds of sale in August 2019. That for the above reasons the ruling of 15<sup>th</sup> October 2020 is no longer capable of being enforced and that the same ought to be reviewed.
8. The Applicant vide her Replying Affidavit dated 9<sup>th</sup> December 2021 opposed the application averring that no new evidence had been adduced. She asserts that the Respondents have only filed this application to cover themselves having blatantly disobeyed the courts orders of 15<sup>th</sup> October 2020. That the application is a ploy to continue wasting the proceeds of the estate and defeating the entitlement of the Applicant to her share of the estate.
9. The Applicant insists that the orders made on 15<sup>th</sup> October 2020 have to date not been complied with. She rejects the Statement of Accounts annexed and categorically denies having been paid the sums indicated therein. That no document has been annexed to show exactly how much the Golf Course Property was sold for. The Applicant prays that the present application be dismissed.



## Analysis and Determination

10. I have carefully considered the present application, the affidavit in Reply as well as the submissions on record. Section 80 of the [Civil Procedure Act](#) provides as follows:-

“Any person who considers himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit”.

11. Order 45 Rule 1 of the Civil Procedure Rules states as follows:-

“(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”.

12. Therefore review of a decree or orders is limited to circumstances where there has been discovery of new and important matter which was not within the knowledge of the Applicant or the court, where an error has been shown to give apparent on the face of the record or for any other sufficient reason.

13. In the case of [National Bank of Kenya Ltd v Ndungu Njau](#) [1997] eKLR, the Court of Appeal held as follows:-

“A review may be granted wherever 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 provision of law cannot be a ground for review.”

14. In this case the Respondents contention is that there exists no decree capable of being executed. However, I find that the Ruling delivered on 15<sup>th</sup> October 2020 was very clear on what the parties were required to do.

15. There is no proof that the said orders have been fully complied with. The Applicant having been paid the amounts due to her. Whilst it is claimed that the survey and sub-division is ongoing there is no proof that this is the case. There is a tabulation of costs from the Department of Survey Kajiado indicating the



amount to be paid before sub-division can be done. There is no evidence that the amount demanded has been paid.

16. All in all I find no merit in this application. The same is hereby dismissed. Each party to pay its own costs.

**DATED IN NAIROBI THIS 22<sup>ND</sup> DAY OF APRIL 2022.**

**MAUREEN A. ODERO**

**JUDGE**

