



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of the Late Michael Muiru Gichuki (Deceased) (Succession Cause 68 of 2018) [2022] KEHC 10991 (KLR) (23 June 2022) (Ruling)

Neutral citation: [2022] KEHC 10991 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
SUCCESSION CAUSE 68 OF 2018
MM KASANGO, J
JUNE 23, 2022
IN THE MATTER OF THE ESTATE OF THE
LATE MICHAEL MUIRU GICHUKI (DECEASED)**

RULING

1. Eric Gichuki Muiru (Eric) has filed an application notice of motion dated July 28, 2021 which is the subject of this Ruling. Eric seek the review and setting aside of the order of this court of March 23, 2021.

Background

2. Margaret Wambui & Olivia Wahu (hereafter petitioners) petitioned for grant of probate of written Will of the deceased hereof. A grant was issued on July 24, 2019.
3. Eric on July 13, 2020 filed in court an objection to making grant. When this matter came before Justice C. Meoli on October 27, 2020 the advocate representing Eric withdrew that objection. The court on that day fixed the hearing of the petitioner's application for confirmation of grant on March 23, 2021. Eric was granted leave to file appropriate objection within 30 days.
4. Five months later, on March 23, 2021 the petitioner's application to confirm grant was before court. Eric was represented on that day by Mr. Njuguna advocate holding brief for Mr. Mwaniki advocate. Mr. Njuguna advocate applied for an adjournment on the ground that Mr. Mwaniki advocate had contracted COVID-19.
5. After receiving submissions for an adjournment and in opposition to the adjournment, the court declined to adjourn the application for confirmation of grant and indeed proceed to confirm the grant of probate with Will attached. It is that order declining to grant an adjournment and confirming the grant that Eric seeks revision and setting aside.



Analysis and Determination

6. Confirmation of grant was on March 23, 2021. Eric did not file his application for review and setting aside until July 29, 2021. No explanation is given for the delay of four months in filing that application.
7. Eric seeks revision and setting aside the orders of 23rd March, 2021 on the ground that on the day the court issued the orders, Eric had an objection on the court record which the court failed to consider.
8. Revision of court order would be granted where it is necessary to correct apparent error or omission on the part of the court. See the case of *Jerioth Wangui Maina vs. Annah Wairimu Wachira* (2015) eKLR thus:-

“The Court of Appeal deliberated on this point in *National Bank of Kenya Ltd versus Njau* (1995-1998) 2EA 249 (CAK); at page 253 of the judgment, the court said:-

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 a sufficient ground for review that another judge could have taken a different view of the matter. Nor can it be a ground of 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 the law cannot be a ground for review.”

9. In this case, there was no error or omission on the part of the court. On March 23, 2021 an application for adjournment was made on behalf of Eric by an advocate who had not filed a notice of appointment. The advocate was therefore not on record nor did he have audience of the court, although the court permitted did him to address it.
10. Secondly, there was no objection on the court record because Eric’s objection to making grant was withdrawn by his advocate on October 27, 2020. No other objection had been filed when the matter came up before court on March 23, 2021.
11. It becomes apparent that there is no basis for granting the prayers Eric seek. Accordingly, the application dated July 28, 2021 is dismissed with costs.

RULING DATED AND DELIVERED AT KIAMBU THIS 23RD DAY OF JUNE, 2022.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Mourice

For Eric Gichuki: - Boniface Njiru

For Margaret Wambui & Olivia Wahu :- Ms. Nderu

RULING delivered virtually.

MARY KASANGO

JUDGE

