



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**In re Estate of Sebastian Mbiwi Kiene (Deceased) (Succession Cause  
409 of 2007) [2022] KEHC 16609 (KLR) (21 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16609 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 409 OF 2007  
TW CHERERE, J  
DECEMBER 21, 2022**

**BETWEEN**

**CHRISTINE MUKIRI ..... 1<sup>ST</sup> APPLICANT**

**JOANINA KAIMURI MBWIRIA ..... 2<sup>ND</sup> APPLICANT**

**JULIA MUGURE MBWIRIA ..... 3<sup>RD</sup> APPLICANT**

**AND**

**LYDIAH KARIMI ..... RESPONDENT**

**RULING**

1. Application dated September 27, 2022 for review in the light of the supporting affidavit sworn by Christine Mukiri (1<sup>st</sup> applicant) on September 27, 2022 and annexures thereto and the replying affidavit sworn by Lydia Karimi (Respondent) on November 16, 2022 and annexures thereto.
2. Applicants seek review of the orders dated June 27, 2019 on the ground that the certificates of birth that respondent relied in support of her application dated July 22, 2011 for revocation of the grant were not authentic.
3. By her replying affidavit sworn on November 16, 2022, Respondent opposes the application on the grounds that the issue of whether she was or was not a widow of the deceased has already been determined by this court and that the impugned certificates of birth have been on record since 2019 and to date have not been submitted for examination to determine their authenticity.
4. Review of court orders is governed by section 80 of the *Civil Procedure Act* which provides inter alia: -  
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.
5. The procedural provisions for review under Order 45 rule 1 of the [Civil Procedure Rules](#) provide that: -
- (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.
6. The Court of Appeal in [Anthony Gachara Ayub v Francis Mabinda Thinwa](#) [2014] eKLR restated the main grounds for review which are discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or for any other sufficient reason and most importantly, the application has to be made without unreasonable delay.
7. Section 80 of the [Civil Procedure Act](#) and order 45 rule 1 of the [Civil Procedure Rules](#) gives the court unfettered discretion to make such order as it thinks fit on sufficient reason being given for review of its decision. However, as it has been constantly stated, this discretion should be exercised judiciously and not capriciously.
8. In [National Bank of Kenya Limited v Ndungu Njau](#) (1997) eKLR the Court of Appeal held that:
- “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”.
9. The ruling from which the applicants seek to review was delivered by Ong’ijo J on June 27, 2019 after the court heard the applicants and the respondent among other witnesses. The court ruled that respondent was a widow of the deceased and she and her children Mercy Gakii, Rosa Wanja and Moreen Gatwiri as evidenced by their birth certificates dependents of the deceased.
10. To date that ruling has not been challenged. The certificates of birth that the applicants challenge have been on record since February 9, 2012, which is 10 years now and have to date not been challenged. Reliance by Applicants on the said certificates as new evidence in support of an application for review is in my considered view an abuse of the court process.
11. Before this court arrived at the decision that respondent and her children are dependents of the deceased, the parties herein had an opportunity to tender evidence challenging the impugned certificates of birth which they did not. Further to the foregoing, an application to subject the respondent’s children to DNA cannot be made long after the court has ruled that they are deceased’s children. This application for review is more of an appeal against the determination of this court. By



- seeking an order of review, I understand the applicants to ask this court to take a different view from the previous decision by this court concerning the distribution of deceased's estate.
12. This court cannot sit on appeal on its own judgement. The applicants have a right to challenge the determination of this court in the proper forum, instead of improperly and impermissibly re-litigating on matters that have already been determined.
  13. From the foregoing, I have no difficulty finding that this application is a mischievous attempt by the Applicant to get orders which the court has previously declined to grant.
  14. Consequently, I have come to the conclusion that the applicants have not demonstrated the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within their knowledge or could not be produced by him at the time when the impugned ruling was passed, or some self-evident error or omission on the face of the record, or any other sufficient reason that would entitle them to an order of review.
  15. Further to the foregoing, this court notes that since December 17, 2021 when the Rectified Certificate of Confirmation of Grant was issued, deceased's estate has not been distributed in terms of section 83 of the *Law of Succession Act* cap 63 Laws of Kenya which provides that: (g) within six months from the date of confirmation of the grant, or such longer period as the court may allow, to complete the administration of the estate in respect of all matters other than continuing trusts, and to produce to the court a full and accurate account of the completed administration.
  16. Consequently, Lydia Karimi, Joanina Kaimuri Mbwiria and Julia Mugure Mbwiri are hereby warned that the court has powers to revoke the grant of representation on account of their failure to proceed diligently with the administration of the estate.
  17. To that end, it is hereby ordered:
    1. Notice of Motion dated September 27, 2022 is found to have no merit and it is dismissed with costs to the respondent.
    2. Lydia Karimi, Joanina Kaimuri, Mbwiria and Julia Mugure Mbwiri are hereby directed to ensure distribution of deceased's estate without further delay and in any case not later than 60 days from today's date
    3. This matter will be mentioned on March 30, 2023 to confirm distribution and for further orders as may be appropriate
    4. In the event that any administrator refuses to sign, the Deputy Registrar of this court shall sign on their behalf
    5. Applicants are condemned to pay the respondent the costs of this application

**Dated at Meru this 21<sup>st</sup> DAY OF December 2022**

**WAMAE.T. W. CHERERE**

**JUDGE**

**Appearances**

**Court Assistant - Morris Kinoti**

**For Applicants - Mr. Gitonga for Frank Gitonga & Associates**

**For Respondent - Mr. Mwirigi for Mwirigi Kaburu & Co. Advocates**

