



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 1293 OF 2002**

**IN THE MATTER OF THE ESTATE OF DANIEL WANGEWA KAMAU (DECEASED)**

**PATRICK KIBE WANGEWA.....1<sup>ST</sup> APPLICANT**

**PETER KAMUYU WANGEWA.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**SUSAN WANDIA GICHERU.....1<sup>ST</sup> RESPONDENT**

**SOPHIA WAMBUI KIMANI.....2<sup>ND</sup> RESPONDENT**

**NELLY WANJIKU THIONGO.....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The deceased Daniel Wangewa Kamau died intestate on 21<sup>st</sup> June 2001. He left six sons and six daughters. The estate comprised 9 parcels of land in Dagoretti and a motor vehicle. Four sons (Robert Githinji Wangewa, Patrick Kibe Wangewa, Bethwel N. Wangewa and Peter K. Wangewa) successfully petitioned for the grant of letters of administration intestate and were issued with the grant. The grant on 9<sup>th</sup> June 2003 and the estate shared among the six brothers.

2. The daughters of the deceased Susan Wandia Gicheru, Sophia Wambui Kimani and Nelly Wanjiku Thiongo) on 21<sup>st</sup> November 2017 applied to revoke the grant as confirmed on the basis that they had been excluded from the petition and the distribution of the estate, and had consequently been disinherited. The application was opposed by the four sons. The court heard the application and determined in a judgment dated 23<sup>rd</sup> September 2019 that, indeed, when the petition was filed there was no reference to any daughter of the deceased, none of the daughters had signed the petition or participated in the distribution of the estate, and yet none of them had renounced her right to petition for the grant or renounced her claim to the estate. The grant was revoked and the certificate of confirmation set aside. The court named the new administrators to be Robert Githinji Wangewa, Patrick Kibe Wangewa, Susan Wandia Gicheru and Sophia Wambui Kimani.

3. It was not brought to the attention of the court then that Robert Githinji Wangewa had since died. I am aware that that the three remaining administrators can proceed to administer the estate of the deceased. However, in place of Robert Githinji Wangewa I will appoint Peter Kamuyu Wangewa to be the fourth administrator. The appointment is made pursuant to **section 47** of the **Law of Succession Act (Cap. 160)** and **rule 73** of the **Probate and Administrate Rules**.

4. The other reasons why Patrick Kibe Wangewa and Peter Kamuyu Wangewa (the applicants) applied to have the judgment of 23<sup>rd</sup> September 2019 reviewed and set aside were that the grant and certificate of confirmation had been issued with the full knowledge of Sophia Wambui Kimani, Susan Wandia Gicheru and Nelly Wanjiku Thiongo (the respondents); that the distribution of the estate had been done in accordance with the wishes of the deceased; that the application for revocation had been brought late, 15 years late; following the distribution of the estate the beneficiaries had taken possession of their respective portions which they had extensively developed; and that the revocation was going to cause untold feuds and enmity within the family of the deceased.

5. The respondents responded that the court had no jurisdiction to review the judgment given the grounds on which the applicants had made the application. Their case was that these were the same reasons that the applicants had used to oppose the application for revocation, and the court had considered the reasons and dismissed them.

6. Order 45 rule 1 of the Civil Procedure Rules provides 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.”

7. It is clear that the applicants were not satisfied with the decision given that the grant be revoked and the certificate of confirmation be set aside. The reasons on which the present application is based were the same reasons the applicants gave when opposing the application for the revocation of the grant. The court considered them and found no merit in them. They have not raised any new and important matter or evidence that would cause the court to review the judgment. Neither have they demonstrated any mistake or error apparent on the face of the court. It is not a sufficient ground for review that the court made a mistake in the consideration of the facts of the case or that it incorrectly applied the law or reached a determination that is different from what the applicant would have wished (**National Bank of Kenya Ltd –v- Ndungu Njau [1997]eKLR**).

8. To put it succinctly the matter being raised by the applicants were fully canvassed before me in the application for revocation. I considered those matters against the provisions of **section 51(2)(g)** of the **Law of Succession Act** and **rule 7(1)(e)** of the **Probate and Administration Rules**, and made a deliberate and conscious decision to revoke the grant. If I was wrong, the applicants ought to have appealed the decision. They do not have a good ground for review.

9. Lastly, the provision sought to be reviewed was rendered on 23<sup>rd</sup> September 2019. This application for review was dated 25<sup>th</sup> September 2020 and brought on even date. It was brought one year after the judgment. There was no explanation why the application could not be brought earlier. The law is that such application should be brought without unreasonable delay. I determine that a delay of one year was unreasonable delay, given that there was no attempt at all to explain it (**Josiah Mwangi Mutero & Another –v- Rachael Wagithi Mutero [2016]eKLR**).

10. In conclusion, except for the appointment of Peter Kamuyu Wangewa as an administrator in place of the late Robert Githinji Wangewa, the application by the applicants to review the judgment of this court dated 23<sup>rd</sup> September 2019 is dismissed with costs.

**DATED and DELIVERED at NAIROBI this 15<sup>TH</sup> FEBRUARY 2021.**

**A.O. MUCHELULE**

**JUDGE**