



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BOMET

SUCCESSION CAUSE NO.2 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE MARITIM RUGUT

GRACE CHELANGAT MARITIM.....APPLICANT/PROTESTOR

VERSUS

ESTHER CHEPKEMOI RUGUT.....RESPONDENT/PETITIONER

RULING

1. The Application coming for consideration in this ruling is the one filed by the 1st protestor dated 1/7/2019 seeking the following orders;
 - i) That the Applicant is aggrieved by the orders issued by Lady Justice Mumbi Ngugi on 3rd day of October, 2018, dismissing her Affidavit of Protest dated 7th March, 2017.
 - ii) THAT there was an inadvertent error apparent on the face of the record by this Honorable court as regard to the particulars and the names of the applicant and those of Grace Chelangat Magoro thereby arriving at an erroneous decision.
 - iii) THAT at no time did the applicant purchase a piece of land from the estate of the late Maritim Rugut as stated in paragraph 12 and 29 of the Judgment.
 - iv) THAT the applicant is a beneficiary to the Estate of the Late Maritim Rugut by virtue of woman to woman marriage to the Respondent herein as recognized by the Kipsigis Customary Law hence entitled to the Estate of the Deceased.
2. The Application is based on the grounds on the face of it and supported by Affidavit of GRACE CHELANGAT MARITIM, the Applicant herein dated 1/7/2019.
3. The Applicant deposed in the Supporting Affidavit that she is seeking review of the Judgment delivered by Hon. Lady Justice Mumbi Ngugi on 3/10/2018 on the basis that there is an error apparent on the face of record in that the court relied on the Affidavit of GRACE CHELANGAT MAGORO who had also filed an affidavit of protest to the confirmation of grant on the grounds that she was liability of the Estate of the deceased having bought a portion of the land from the deceased.
4. The Applicant also sought stay of the proceedings herein pending determination of the suit Application. She also sought orders setting aside the dismissal of her Affidavit of protest against confirmation of grant.
5. The Petitioner opposed the Application for review of the Judgment delivered on 3/10/2018 at the ground that the court made finding that the 1st protestor was not a beneficiary of the Estate of the deceased and further that the Applicant should file an appeal against the said judgment if she is aggrieved.
6. The parties filed written submissions in the Application which I have duly considered. I find that it is not in dispute that there are two protestors with similar names.
7. GRACE CHELANGAT MARITIM who is the 1st protestor filed an Affidavit dated 7/3/2014 being a protest to the grant on the basis that she is a beneficiary having been married under woman to woman marriage.

8. GRACE CHELANGAT MAGORO also filed an Affidavit of protest dated 8/12/2015 on the basis that she is a purchaser of a portion of the deceased's Estate and should be regarded as a liability of the Estate.

9. It is clear that the court relied on the Affidavit of protest by the 2nd protestor in dismissing the 1st protestor's protest dated 7/3/2017.

10. Order 45 CPR sets out the rules for the review of a judgment. The same provides as follows:

“45 (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 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 review of judgment to the court which passed the decree or made the order without unreasonable delay.”

11. I find that it is in the interest of justice to review the judgment dated 3/10/2018 on the basis that there is an error apparent on the face of the record which arose as a result of the similar names of two protestors.

12. I accordingly allow the Application dated 1/7/2019 on the following grounds;

(i) THAT the judgment dated 3/10/2018 be and is hereby reviewed and the order dismissing the 1st protestor's protest be and is hereby set aside.

(ii) THAT the two protests be heard denovo.

(iii) THAT each party to bear their own costs of the Application.

(iv) THAT the matter be mentioned virtually on the next civil week for directions on how to proceed with the two protests.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 22ND DAY OF MARCH 2021.

A. N. ONGERI

JUDGE