



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**MISCELLANEOUS SUCCESSION CAUSE NO. 87 OF 2007**

**IN THE MATTER OF THE ESTATE OF: JACOB MULIJO OMBITO.....DECEASED**

**AND**

**IN THE MATTER OF: AGNES SANYA OMBITO.....PETITIONER (DECEASED)**

**BETWEEN**

**MARY GRET NGORE.....RESPONDENT**

**AND**

**WYCLIFFE OUMA MANASE.....APPLICANT**

**RULING**

1. Wycliffe Ouma Manase, the applicant herein moved the court by way summons for review by an application dated 12<sup>th</sup> February 2016. The application was brought under Rules 49 and 73 of Probate and Administration Rules and Order 45(1) of the Civil Procedure Act rules. He is seeking for review of the ruling that was delivered on 23<sup>rd</sup> November 2015. His application is based on the following grounds:

- a) That the court made a mistake/ an error in holding that Grace Ombito Gori (deceased) the sole beneficiary in the estate of Jacob Mulijo Ombito consented to the petition for grant of letters of administration intestate to Agnes Sanya Ombito without any proof of such involvement and or consent.
- b) That it is only through citation or consent that Grace Ombito Gori would be said to have been involved and consented to the petition in question.
- c) That no proof of such citation and/or consent was ever produced for the court to conclude that Grace Ombito Gori consented to or allowed Agnes Sanya Ombito to proceed with the petition.
- d) That the said Agnes Sanya Ombito took advantage of the illiteracy to disinherit Grace Ombito Gori (deceased) and her descendants of their inheritance.
- e) That the said Agnes Sanya Ombito took advantage of the illiteracy to include her son Christopher Wandera as a beneficiary when he was entitled to the estate of his father Washington Ombito Mulijo.

2. The application was opposed on the following grounds:

- a) That the application does not satisfy the requirements for review.
- b) That the applicant is on appeal on its decision.

3. Order 45 Rule 1 of the Civil Procedure Rules provides:

**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.

In order for the court to review its judgment or ruling it must be satisfied that:

- a) That there is 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;
- b) There is a some mistake or error apparent on the face of the record; and
- c) That there exists some other sufficient reason.

4. The court of appeal in the case of **National Bank Of Kenya Limited v Ndungu Njau [1997] eKLR** the Court of Appeal stated:

**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 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.**

In the instant application, the issues raised are not issues envisaged in a review. He is challenging the decision arrived at. The redress ought to have been sought in an appeal.

5. The application is therefore dismissed with costs.

**DELIVERED and SIGNED at BUSIA this 11<sup>th</sup> day of March, 2020.**

**KIARIE WAWERU KIARIE**

**JUDGE**