

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 2923 OF 2004

IN THE MATTER OF THE ESTATE OF KARIUKI MAINA

HANNAH WAIRIMU KARIUKI.....1ST PROTESTOR/APPLICANT

JOHN MWANGI KARIUKI.....2ND PROTESTOR/APPLICANT

VERSUS

JOSEPH MAINA KARIUKI.....ADMINISTRATOR/APPLICANT

R U L I N G

1. The application subject of this ruling was filed by the 1st protestor Hannah Wairimu Kariuki and is dated the 27th of July 2018. It is seeking to review, vary and/or set aside the orders of Musyoka J issued on 26th of February, 2016, on grounds that the court adopted a consent order which was recorded without sufficient facts, mis presentation and/ or ignorance of undisputed material facts and without the authority of the 1st Protestor.
2. The application was supported by the 2nd Protestor but objected to by the Respondent in an affidavit dated 4th September, 2017 and which in a nut shell states that the issue subject herein is res judicata having been considered by Musyoka J in his ruling of the 6th of February, 2016.
3. There is no dispute that in the application for revocation of grant the issue of the impugned consent, ground in this application was raised, and in his ruling of 26th February, 2016 the Judge considered the same.
4. In order for a court to review its decision there has to be discovery of new and important matter or evidence which even after due diligence it was not within the knowledge of a party, or on account of mistake or error apparent on the face of the order made or for any other sufficient reason.
5. In my view the applicant has failed to demonstrate the requirements set out in above as espoused in **Order 45 of the Civil Procedure rules** as there is nothing new that has been discovered, all matters having been raised before Musyoka J who extensively considered the same. If the 1st Protestor was aggrieved by the ruling she ought to have appealed against the same. There being no grounds to allow a review, this court cannot sit on appeal on a matter decided by a competent court of concurrent jurisdiction. Secondly there has to be an end to litigation and parties ought not to raise similar issues severally.
6. For the above reasons application dismissed with costs.

DATED and DELIVERED in NAIROBI on this 27th day of May 2020.

ALI-ARONI

JUDGE