

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2071 OF 2011

IN THE MATTER OF THE ESTATE OF PAUL MBUGUA KIBE- (DECEASED)

CATHERINE NJERI NDUATI.....APPLICANT

VERSUS

ROSE NYAWIRA KIBE.....RESPONDENT

RULING

1. In the ruling dated 6th June 2019 by this court on the application dated 9th October 2017 by the respondent Rose Nyawira Kibe, it was directed that the applicant Catherine Njeri Nduati does refund to the respondent Kshs.11,742,400/52. The refund was ordered on the basis that the amount had not been disputed in her replying affidavit sworn on 20th November 2017 in response to the application. In the instant application dated 10th July 2019 for review under **Order 45 rules 1** and **2** of the **Civil Procedure Rules** applicant has pointed out that in her paragraph 5 of the replying affidavit she had contested the allegation that she was supposed to refund the said amount. In the application, the applicant asked that the ruling be reviewed so that the amount to be refunded is Kshs.4,121,518/49 and not Ksh.11,742,400/52.

2. The replying affidavit was sworn by Joseph Makumi Advocate on behalf of the respondent. Their case was that the sought Kshs.11,742,400/52 was on the basis that had Kshs.5,968,191/= been left in the account –

“would have grown to Kshs.11,742,400/= proportionately with the monies left in the account and this court has powers to make a determination on interest which can be in accordance with the bank rates or court rates.”

3. I find that on proceeding on the basis that the sum of Kshs.11,742,400/52 had not been disputed, the court inadvertently erred. Therefore, under **Order 45 rule 1** of the **Civil Procedure Rules**, I review and set aside the ruling that was delivered on 3rd June 2019 and all consequential orders.

4. I ask the parties to address the court afresh on the application dated 9th October 2017.

5. I make no orders as to costs.

DATED and DELIVERED at NAIROBI this 21ST SEPTEMBER, 2020

A.O. MUCHELULE

JUDGE