

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1662 OF 1993

IN THE MATTER OF THE ESTATE OF SIMON MUNGAI MUTITI (DECEASED)

WILLIAM MBURU MUNGAI.....APPLICANT

VERSUS

BETHA WANJIRU MUNGAI..... RESPONDENT

RULING

1. An application for review can only be allowed if the applicant can show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced by him at the time of the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason (**Tokesi Mombili and Others –v- Simon Litsangu, Civil Appeal No. 90 of 2001 at Kisumu (C.A)**). The application should be brought without unnecessary delay.
2. The ruling sought to be reviewed was delivered on 21st October 2010. The present application was filed on 2nd August 2011. It was not alleged that the application had not been brought timeously.
3. In the dismissed application filed on 26th August 2010 the applicant William Mburu Mungai sought the revocation of the grant that had been issued on 11th January 1994 and confirmed on 29th July 1994 to the respondent Betha Wanjiru Mungai in respect of her late husband Simon Mungai Mutiti who had died intestate on 25th July 1991. The grounds for the revocation were that the letters of administration had been brought fraudulently without his participation or that of his late father. The respondent had opposed the application saying that, infact, the applicant's father was the one who had signed P & A 57 as surety at the time of the petition, and therefore that the claim that he did not know about the matter was not true. It was common ground that the respondent's father Mungai Mutiti Chege (who died on 8th May 2007) was the brother of the deceased herein. The respondent was able to show that the applicant's father was the surety in the petition.
4. The applicant alleges that his father was Mungai Mutiti Chege yet the surety was Ayub Mungai Mutiti. However, the ID Card No. xxxxx/xx indicates that the two names referred to the same person.
5. The other reason why the application was dismissed was because the applicant lacked capacity as he had not taken out letters of administration in respect of his late father's estate before bringing the application. He now states that he obtained the letters subsequently. This was not discovery of new and important matter or evidence.
6. In short, the applicant has not brought himself within the provisions of **Order 45 rule 1** of the **Civil Procedure Rules** to be able to have the impugned ruling reviewed. He was not the deceased's child, and his father whom he alleges had an interest in the deceased's estate participated in the proceedings leading to the grant without laying a claim to the estate.
7. I dismiss the application with costs.

DATED and SIGNED at NAIROBI this 22ND day of MAY 2019

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 27TH day of MAY 2019

J.N. ONYIEGO

JUDGE