



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**(FAMILY DIVISION)**

**SUCCESSION CAUSE NO 1027 OF 1989**

**IN THE MATTER OF THE ESTATE OF JAMES MUHU KANG'ARI (DECEASED)**

**SARAH WANGARI KANGARI.....APPLICANT**

**R U L I N G**

1. Before court is a Notice of Motion dated 10<sup>th</sup> July 2018 filed by **Sarah Wangari Kangari** and supported by her affidavit of even date where she seeks for review of the order made by Hon. Justice Musyoka on 11<sup>th</sup> April 2018 in respect to a statement of account of the execution of the Will of James Muhu Kang'ari (deceased) dated 22<sup>nd</sup> July 1986 and for the court to make appropriate orders for the actual transfer and effectual execution of the specific legacies;

It is the Applicant's case that not all legacies have been transferred and the refusal on the part of the Executrix to do so may result to beneficiaries being disinherited. Further the Applicant seeks an order that enforces provisions of the Will.

2. The application is opposed by way of grounds of opposition dated and filed in court on 5<sup>th</sup> November, 2018. The Application is said to be misconceived, frivolous, scandalous, vexatious and an abuse of court process. Further that the court is functus officio, this is not a proper matter for review, court lacks jurisdiction and the Applicant is a vexatious litigant.

3. **Rule 73 of Probate and Administration Rules** empowers this court to make such orders as may be necessary for the ends of justice to be met and to prevent abuse of court process. In my view this Rule must be read together with **Order 45 of the Civil Procedure Rules** that give principles upon which the court may review its orders.

4. **Order 45 Rules** sets the principles to be followed on reviewing an order or decree.

It provides that where one is aggrieved and an appeal lies against the decree or order and no appeal is preferred or where no appeal lies and where;

- i. There is discovery of new and important matters which after exercise of due diligence was not within the knowledge of the party or could not be produced at the time the decree or order was passed.
- ii. On account of some mistake or error apparent on the face of the record.
- iii. Or for any sufficient reason.

**Rule 2(1)** of the same order requires an application made other than for reasons in i-iii above be made to Judge who made the order unless the Judge is no longer in the station, in the absence of such judge the order may be heard by any other judge.

5. Having read the pleadings, considered the statement of account and the supplementary thereof, the current application before court and the objection I find that although the executrix did give the court a status report of the progress of the Will at the time if indeed the legacies are yet to be transmitted to the rightful owners as per the Will and/or if there is no progress to bring execution to a close 28 years after the death of the deceased and parties are in dispute, the court in the interest of justice and fair play cannot give a blind eye to the concerns raised. The report annexed to the affidavit of the Executrix dated 23<sup>rd</sup> June 2017 and filed in court on 27<sup>th</sup> June 2017 together with the supplementary statement dated 3<sup>rd</sup> November 2017 as indicated by Musyoka J gave a satisfactory account of the status of the estate at the time. The reports indicated that some matters and/or transactions were to be concluded in the future and therefore since there are transactions not concluded since the order of 11<sup>th</sup> April 2018, there is sufficient reason in the circumstances to call upon the court to review the order of the court but only to the extent that the Executrix do file a current status report on matters that had not been concluded at the point the previous reports were filed.

6. The Executrix should equally propose immediate action that will bring this matter to a closure.

7. Further the Executrix is to report on how the deceased directors of Muhu holdings whose estates have an interest in the same are to be replaced to take care of the interests of the said estates.

**Dated and Delivered in Nairobi on this 23<sup>rd</sup> day of May, 2019**

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**ALI-ARONI**

**JUDGE**