

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1642 OF 2010

IN THE MATTER OF THE ESTATE OF LAURENT NTIRAMPERA (DECEASED)

RULING

1. Achode J delivered a ruling on 3rd October 2017, wherein she revoked the grant made to Adam Gasongo herein on 15th February 2011 and dismissed his summons for revocation of grant while allowing that by Beatrice Kanyanzire in HCSC No. 423 of 2004. In the said ruling Achode J. found that Beatrice Kanyanzire was a widow of the deceased. The court based its decision on a certificate of marriage and evidence that there was prolonged cohabitation of the deceased and the said Beatrice Kanyanzire upon which it could presume marriage.
2. Adam Gasongo has come back to court, by an application dated 13th October 2017, in which he seeks review of the orders of 3rd October 2017. He seeks review on three grounds – that the court did not take into consideration that the church had denied that the wedding took place; the respondent had relied on forged documents and that the photographs relied on were ‘photo-shopped.’
3. The respondent, Beatrice Kanyanzire, has responded to the application through an affidavit she swore on 22nd February 2018 and filed herein on 23rd February 2018. She essentially states that the application is founded on baseless allegations.
4. There were directions on 26th February 2018 that the said application be canvassed by way of written submissions. Both sides complied with the said directions by filing their respective written submissions. I have perused through the written submissions, together with the authorities that the parties have cited and have attached copies thereon. I have taken note of the same, and incorporated the points of law raised in this my ruling.
5. Review of court orders is sought on three principal grounds – that there is an error apparent on the face of the record, there is discovery of material that was not available as at the date of the making of the deceased and any other sufficient reason. The applicant herein has not sought to demonstrate on which of the three limbs for review he founds his application on, whether error on the face of the record, discovery of new matter of evidence or other sufficient reason.
6. Regarding the marriage certificate, I note that the court at paragraph 14 of the ruling, considered the letter he complains was not taken into account, and proceeded to evaluate that evidence at paragraph 18 of the ruling. I note that he attaches copy of another letter from St. Francis church as evidence that the ACK St. Francis and CPK Church Karen were really one and the same institution. This was evidence that was available as at the time the ruling was delivered and it is evidence that could have been submitted at the hearing, if he did not agree with the assessment of the evidence by the court at paragraph 18 then he should have appealed against the same. In any event, the certificate was not the sole reason upon which the court found that the respondent was a widow of the deceased. The court considered other evidence and concluded that there was prolonged cohabitation and proceeded to presume marriage.
7. On the allegation relating to the photographs relied on being ‘photo-shopped,’ the applicant has provided no proof whatsoever that the same were manipulated. Proof of such manipulation can only be by way of a report by a specialist in that field. He has provided no proof, and the photographs he has attached to his affidavit are irrelevant. In any event, such report would still be evidence that he ought to have presented at the hearing of the application. The subject photographs were annexures to affidavits that he had been served with prior to the oral hearing of the application. He had ample time to subject the photographs to necessary testing to establish manipulation and obtain relevant reports for presentation in court as proof thereof.
8. In in short, there is no material upon I can find justification for review of the orders of this court of 3rd October 2017. The application before me is without merit. I hereby dismiss the same with costs to the respondent. Should the applicant be unhappy with the orders that I have made herein, there is liberty to challenge the same at the Court of Appeal, within twenty-eight (28) days.

DELIVERED, DATED AND SIGNED at NAIROBI THIS 27TH DAY OF JULY 2018.

W. MUSYOKA

JUDG