



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 1341 OF 2002**

**IN THE MATTER OF THE ESTATE OF JONATHAN CHEGE NGUYAI**

**MARGARET NJOKI NGUYAI..... PETITIONER**

**VERSUS**

**DAVID KAMARI.....1<sup>ST</sup> OBJECTOR**

**SAMUEL GITHEGI NG'ANG'A.....2<sup>ND</sup> OBJECTOR**

**RULING**

1. The Application coming for consideration is the one dated 27.5.2015 seeking review of the order of this Court dated 20.1.2015 and also for costs to be provided for.
2. The Applicant submitted in writing that the orders were granted *exparte* and the court authorized the Deputy Registrar to sign all transfer documents so as to invest ownership of the whole parcel of land known as LR. No. KABETE/NYATHUNA/285 on the Petitioner/Respondent.
3. The Application is supported by the Affidavit of DR. John Khaminwa dated 27/5/2015 in which he has deposed that on 20.1.2015 he was indisposed and therefore the matter proceeded *exparte* and the orders were granted.
4. It is further stated in the Supporting Affidavit that following the grant of the said orders dated 20.1.2015, the court through the Deputy Registrar approved the Petitioner one Margaret Njoki Nguyai to be the administratrix without giving the Applicant a right to a fair hearing.
5. Further that it is necessary to grant audience to the objector to be heard as he is a beneficiary to the Estate of the late JONATHAN NGUYAI.
6. In his submission, the objector's Counsel relied on the case of **RICHARD NCHARPI LEIYAGU VS INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION & 2 OTHERS [2013] eKLR** where the Court of Appeal held as follows:

***“We agree with those noble principles which go further to establish that the Court’s discretion to set aside an *exparte* Judgment or Order for that matter is intended to avoid injustice or hardship resulting from an accident, inadvertence or inexcusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay the course of Justice”***

7. The Respondent opposed the Application through a Replying Affidavit sworn on 25/6/2015 in which

she deposed that on the material day DR. KHAMINWA deliberately failed to come to Court and was seated outside and he sent a representative who failed to address the Court.

8. Further, that this matter has a long history of multiple applications by the objector and that the court had castigated the objector's advocates for such conduct and barred them from filing any applications in this suit as the same amounts to an abuse of the Court process.

9. It was submitted that the orders which were granted for the Deputy Registrar were to enforce orders issued in HCCC No. 473 of 1993 which was concluded long time ago and no appeal was preferred there from.

10. I have considered the submissions filed by the Parties. The order the applicant is seeking to set aside was made on 20.1.2015. The Application seeking to set aside the said order was filed on 27.5.2015. There is lapse of time between the time the order was made and the time the said Application was filed.

11. In the case of **WACHIRA KARANI Vs BILDAD WACHIRA [2016] eKLR**, the Court stated as follows;

**"The fact that setting aside is a discretion of the court is not disputed. What is contested is whether the applicant has demonstrated "sufficient cause" to warrant the exercise of the courts discretion in its favour. I again repeat the question what does the phrase "Sufficient cause" mean. The Supreme Court of India in the case of *Parimal vs Veena* observed that:-**

*"sufficient cause" is an expression which has been used in large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", in as much as may be necessary to answer the purpose intended. Therefore the word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the view point of a reasonable standard of a curious man. In this context, "sufficient cause" means that party had not acted in a negligent manner or there was want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive." However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously"*

12. I rely on the maxim that equity assists the vigilant and not the indolent. I find that the said application for review was not filed timely and for that reason I disallow it.

13. I accordingly dismiss the application dated 27.5.2015 with no orders as to costs

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 19<sup>TH</sup>**

**DAY OF DECEMBER 2018**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**