



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

P & A NO. 88 OF 2005

HESBON NJAGI WAMBUGU alias ESBON NJAGIDECEASED

VERSUS

ALICE MUMBI NJAGIPETITIONER

RULING

1. The applicants have applied for revocation of the grant on the basis that the petitioner has not within one year failed to apply for the confirmation of the grant in terms of section 76 (d) of the Succession Act (Cap 160) laws of Kenya as read with Rule 44 (1) of the Probate and Administration Rules.
2. According to the affidavit of the first protestor is that she is the sister of both the deceased and the second protestor.
3. It is her affidavit evidence that the petitioner and the protestors have all lived on the deceased property land reference No. Ngariama/Rungeto/154. It is her further evidence that the deceased inherited the suit property from their late father, Njonjwe Mungai. And for that reason shae stated that their interest in that land is an overriding interest notwithstanding that the land was registered in the name of their late brother, who died on 9th October 2003
4. Furthermore she also stated that the petitioner was granted letters intestate on 9th August 2005 and has not filed summons for confirmation. She further states that without summons for confirmation they cannot file a protest.
5. The protestor/applicant counsel, Mr. M. Njagi for the applicants has submitted that the grant should be recalled as it is the property of the court.
6. The proceedings were conducted in the absence of the petitioner. I was satisfied that the petitioner was served and had adequate notice of hearing.
7. This is an application for review of this court's order dated 9th September 2014. In terms of Order 45 of the 2010 CPR a party may apply for review of a court judgement if the following conditions are shown to exist:
 - a) If there is an error or mistake on the face of the record, or
 - b) Or there is a discovery of a new and important matter which after exercising due diligence after trial was not available but that new matter came to his knowledge after the judgement had been delivered, or

c) for any other sufficient reason.

8. The reason why review is sought is that the respondent allegedly went against the wishes or directives of his father. As a result a curse has befallen their family because the respondent allegedly went against the directives of his father. In order to avoid further misfortunes, the review is sought to avoid them.

9. It is clear from the foregoing that the grounds upon which review of a court judgement is entertained do not include beliefs in curses allegedly arising from one of the parties going against the wishes of a deceased father. In the circumstances, the application is not merited and is hereby dismissed.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **18th** day of **FEBRUARY 2016**

In the absence of both applicant and respondent

Court clerk Njue

J.M. BWONWONGA

JUDGE

18.02.16