



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.1635 OF 2014**

**IN THE MATTER OF THE ESTATE OF THE LATE M G H S**

**P S aka P S.....APPLICANT**

**RULING**

1. I have looked at the medical report of the applicant. It shows that she suffers from type 2 Diabetes Mellitus, hypercholestromia, hypertension, cerebro-vascular accidents including frequent transient, ischaemic attacks. Her physical activity after the strokes has been reduced to a few steps assisted by nurses or with a walking frame. She is 88.
2. Her dependants S P S and D M H S have each consented to the grant being confirmed on the basis of the distribution schedule annexed to the application.
3. Under **section 71(3)** of the **Law of Succession Act (Cap 160)** a grant can only be confirmed before the expiry of six months from the date of the grant if it is satisfied:-
  - a. that there is no dependant, as defined by section 29, of the deceased; and
  - b. that it would be expedient in all the circumstances of the case so to direct.
4. The power to review orders and decrees in succession cases is donated by **Order 45** of the **Civil Procedure Rules**. There has to be discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the trial when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. **(In the matter of the Estate of Hannah Nyangahu Mwenja (deceased), Nairobi High Court Probate and Administration Cause No. 901 of 1996).**
5. When on 22<sup>nd</sup> January 2015 this court declined the application to confirm the grant before the expiry of six months was made it had been informed that the applicant was aged and sick and that she had the dependants who reside out of the country and who had consented to the application. It follows that nothing new is being said in this application for review. The applicant has now presented her medical records. But that was information within her knowledge, or could have been obtained after the exercise of due diligence. In any case, under **section 71(3)** of the **Act** the application to confirm before the expiry of six months should be brought where there is no dependant, as defined under **section 29**, of the deceased.
6. I disallow the application.

**DATED and DELIVERED at NAIROBI this 30<sup>th</sup> January 2015.**

**A.O. MUCHELULE**

**JUDGE**