

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MILIMANI

SUCCESSION CAUSE NO. 705 OF 1996

IN THE MATTER OF THE ESTATE OF GICHUNJI KIMANI –(DECEASED)

RULING

1. The application for determination is dated 15th September 2008. It seeks the review or setting aside of consent orders that were recorded by the on 2nd May 2006. The applicant alleges that the said orders were recorded fraudulently, without informing all the beneficiaries and dependents of the estate. He says that the said orders affect him adversely in terms of his company of the effect parcels of land.
2. In reply the respondents argue that the decision to record the consent was reached at a family meeting where the family agreed on the distribution of the property. The applicant is said to have sold his part of the land to defect the consent orders.
3. The application is grounded on the provision of the land governing review. To obtain review it must be demonstrated that there was either an erroron the face of the record on, There is new matter that no one was available at the time the orders were made. In this case the applicant has not sought to show that there are errors on the fact of the record on discovery of evidence that could not be availed at the time when the orders were made. There is no basis for the review of the orders.
4. On the setting aside of the consent orders, it is confident to point out that the land there on was settled in *Wanjiku –vs- Wamboko* (1988) KLR 429 where it was held that a consent order has a contracted effect and can only be set aside on grounds which would justify setting aside a contract, or if certain conditions remain to be fulfilled which are not carved out. A contract will be set aside for forward or misrepresentation. I have carefully gone through the record and I see nothing that points to fraud or misrepresentation with respect to the consent avers in question.
5. I find no merit on the application dated 18th September 2008, and I hereby dismiss the same with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 31st DAY OF January, 2014.

W. MUSYOKA

JUDGE