



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISC. APPLICATION. NO.83 OF 2007

(FORMALLY MISC. APPL. NO. 29 OF 1994 – NYERI)

REGINA WAKARITI.....APPLICANT

VERSUS

TERESIAH WANJA GACHO.....1ST RESPONDENT

DAVID MWANGI MACHARIA.....2ND RESPONDENT

RULING

This is the notice of motion dated 14th May 2013 where the Applicant seeks an Order of review and/or setting aside of the Orders made on 18th March 2013. The reason is that there are issues which the Applicant wants this court to hear orally. And the said issues would not adequately be dealt with through written submissions. The Orders complained of were made pursuant to a consent entered into by both Counsels representing both parties. The Applicant's application is premised on Order 45 rule 2 Civil Procedure Code.

Review may be allowed when any of these circumstances prevail.

- i. Discovery of new important matters or evidence which was unknown to the Applicant at the time of the consent.
- ii. The presence of a mistake or error apparent on the face of the record.
- iii. Any other sufficient reason.

On 7th June 2012 this court vide its Ruling determined three main issues namely;

- i. The Applicant was not a wife of the deceased.
- ii. The deceased was however the father of her two children Cecilia Wanjiru and Miriam Wahito who are beneficiaries of the deceased's estate.
- iii. The 2nd Respondent was also a beneficiary by virtue of "***Purchaser's interest***".

This Ruling has not been set aside.

The 1st Respondent filed summons for confirmation of grant on 27th June 2012 well within the time lines given by the court. It should be clearly noted that the Applicant herein has not filed any Protest in this matter. On 18th March 2013 the two Counsels agreed to file submissions in respect to the summons for confirmation. Mr. Gacheru for the Respondents filed and served his submissions on 9th April 2013. To date the Applicant has not filed any. Instead she has filed this application dated 14th May 2013. The Respondents filed grounds of opposition dated 20th June 2013. I have considered the rival submissions, affidavits and the material on record. First of all the Applicant has totally failed to place herself within the circumstances of Order 45 rule 2 Civil Procedure Rules.

Secondly she has not even tried to mention that she was duped into entering into the consent she wishes to have reviewed/ and or set aside.

Thirdly she has not filed any Protest to the summons for confirmation filed by the 1st Respondent. This court does not therefore understand the nature of the oral evidence she intends to adduce before it. It is in relation to what?

I therefore find this application to be misplaced and an abuse of the court process. The Applicant is given 14 days within which to file and serve her submissions as per the Order of the court dated 18th March 2013. The Deputy Registrar to fix the matter for mention in the new term for fixing of a date for Ruling if submissions will have been filed.

DATED, SIGNED AND DELIVERED AT EMBU THIS 1st DAY OF AUGUST 2014.

H.I. ONG'UDI

JUDGE

In the presence of:-

Njue/Kirong – c/c

Mr. Ithiga for Gacheru for Respondent

Parties

Abubakar for Applicant