



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
SUCCESSION CAUSE NO. 133 OF 2005
IN THE MATTER OF THE ESTATE OF
NAHASHON WAMUKURWE MUTHUMBI.....DECEASED
AND
PERIS WANJA
MILKA WANGUI
TERESIA NYAMBURA
VERONICA GATHONI
MARY MUMBI
.....APPLICANTS

VERSUS

HANNAH NJERU MUTHUMBI.....1ST RESPONDENT
RICHARD MACHARIA MWANGI2ND RESPONDENT

RULING

Peris Wanja, Milka Wangui, Teresia Nyambura, Veronica Gathoni and Mary Mumbi, being the applicants herein, took out the summons general dated 25th October 2010 in which they sought for the following orders:

1. *That this honourable court be pleased to certify this application as extremely urgent and be heard ex-parte in the 1st instance due to its urgency.*
2. *That this honourable court be pleased to order that the status-quo ante of the judgment delivered on the 17th September, 2010 be maintained pending the hearing and final determination of this application.*
3. *That in addition, this honourable court be pleased to order a review and/or setting aside of its judgment delivered on the 17th September, 2010 with all consequential orders therefrom.*
4. *That the costs of this application be borne by the respondent.*

The application is supported by the affidavit of Veronica Gathoni. The application was treated as unopposed when Hannah Njeri Muthumbi, the Respondent herein and her advocate failed to file a reply nor attend court during the interpartes hearing of the summons despite having been served.

It is the contention of the applicants that this court arrived at its judgment of 17th September 2010 on

the basis of misrepresented facts. It is argued that this court was informed that 2 acres was sold to pay the estate debts yet the persons who purported to have executed the sale transaction were long dead. Annexed to the affidavit of Veronica Gathoni are copies of the sale agreement and the death certificates of the sellers. I have critically looked at those annexes and it is clear that the agreement which was used to sell 2 acres to be excised from L.R. No. Nyeri/Naromoru/24 to one Richard Macharia Mwangi is dated 26th February 2005. Those who executed the agreement are namely: Peter Kinyua Kingathia, Richard Macharia Mwangi, Samuel Nderitu Wambugu, Hannah Njeri Muthumbi, Samson Mwangi Gikonyo, Nahashon Wamukurwe Migwi and Michael Wachira Karomo. The seller is stated to be Peter Kinyua Kingathia. The agreement clearly states that the names of the sons of the late Nahashon Wamukurwe Mwangi who agreed to sell the land to be: John Mukumbi, Lawrence Gachuhi, Francis Migwi and Joseph Gathoga. The death certificate and the letter of J.K. Wainaina, assistant Chief Kamburaini-sub-location attached to the aforesaid affidavit indicates that Joseph Gathoga died on 14th March 2003 whereas Francis Migwi and Muthumbi Wamukurwe died on 27th June 1987 and on 20th January 2004 respectively. It is therefore obvious that the sale agreement executed on 26th February 2005 was purportedly authorized and or signed by deceased persons. I have been urged to set aside by an order of review the decisions of this court dated 17th September 2010 because of the above reasons. It is a well settled principle of law that an order for review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The judgment of this court delivered on 17th September 2010 arose out of the summons for revocation or annulment of grant dated 2nd October 2007. The ratio decidendi of this court's judgment was that the application was dismissed on the ground that the applicants were made aware of the pendency of the succession proceedings and for the reason that the issue touching on the distribution of the estate could not be tackled under section 76 of the law of succession Act. In my humble view the application for review now before me cannot succeed because the same does not meet the threshold set under order XLIV (now order 45) of the Civil Procedure Rules. In aforesaid application i.e. the application for revocation or annulment of grant dated 2nd October 2007, the issue touching on the sale agreement dated 26th February 2005, was never alluded nor brought to the attention of this court as a matter in contention and that is why it never formed the basis of this court's judgment. It cannot therefore be said that the Respondent misled this court into reaching at an erroneous judgment. The application is for dismissal. The same is dismissed with no order as to costs.

Dated and delivered this 25th day of February 2011.

J.K. SERGON

JUDGE

In open court in the presence of Mr. Ng'ang'a for the Applicant N/A A.K. Kariuki for Respondent.

J.K. SERGON

JUDGE