



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CIVIL APPEAL NO 5 OF 2002**

**JOSEPH WANG'OMBE NDIRANGU.....1<sup>ST</sup> APPLICANT**  
**KAROGO NDIRANGU.....2<sup>ND</sup> APPLICANT**  
**IBRAHIM MURIRA NDIRANGU.....3<sup>RD</sup> APPLICANT**

**VERSUS**

**BONIFACE MUTAHI NDIRANGU .....1<sup>ST</sup> RESPONDENT**  
**MARGARET WANJIKU NDIRANGU .....2<sup>ND</sup> RESPONDENT**

**RULING**

Joseph Wang'ombe Ndirangu, Karogo Ndirangu and Ibrahim Murira Ndirangu , the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Applicants herein took out the motion dated 9<sup>th</sup> September 2009 in which they beseeched this court to grant them the following orders:

1. ***That the court be pleased to review the order issued on the 26<sup>th</sup> February, 2009 refusing to substitute the applicants in place of the deceased person/appellant.***

The motion is supported by the affidavit of Karogo Ndirangu sworn on 7<sup>th</sup> September 2009. The motion was strenuously opposed by Boniface Mutahi Ndirangu and Margaret Wanjiku Ndirangu, the 1<sup>st</sup> ad 2<sup>nd</sup> Respondents herein.

It is the submission of the Applicants that though the appeal was summarily rejected, there is a pending application which seeks to have the order summarily rejecting the appeal to be reviewed and set aside. The Applicants sought to be substituted in place of Theru Ndirangu, deceased. They attached to the affidavit of Karogo Ndirangu a copy of the limited letters of administration in respect of the deceased's estate.

The Respondents have urged me to dismiss the motion on the basis that the same does not meet the conditions necessary for the grant of an order for review. Mr. Wahome pointed out that there is no discovery of a new matter or information relevant to this case which was not within the knowledge of the Applicants. It is also argued that there is no error nor mistake apparent on the face of the ruling of Lady Justice Kasango delivered on 26<sup>th</sup> February 2009. The Respondents further argued that the application was made after a prolonged delay yet there is nothing which prevented the applicants from making the application earlier.

I have considered the competing submissions plus the material placed before this court. The history

of this matter started before the Land Disputes Tribunal, Ruringu. It would appear Theru Ndirangu and Wamuhu Ndirangu had filed a complaint before the Nyeri Land Disputes Tribunal claiming to be entitled to the parcel of land known as L.R. no. Aguthi/Gatitu/27. The record shows they were given the award. The duo then made an application for the award to be adopted as the decision of the Chief Magistrate's court Nyeri. The application was dismissed on the ground that the same was resjudicata vide Nyeri C.M.C. Award no. 103 of 2000. The Applicants were unhappy hence this Appeal. The Appeal was summarily rejected by Justice (retired) J.V.O. Juma on 3<sup>rd</sup> October 2002. The Applicants applied for the order to be set aside by an order of review vide the motion dated 18<sup>th</sup> March 2003. It would appear nothing happened until the Applicants filed the summons dated 27<sup>th</sup> October 2008 where they sought to be substituted in place of the Appellants who had passed away. The application was heard and dismissed by Lady Justice Kasango on 26<sup>th</sup> February 2009. The main reason given by the Honourable judge when dismissing the application is that the Appeal having been summarily rejected there was no appeal which the Applicants could be enjoined.

They are now before this court stating that the order should be set aside because there is an error apparent on record. The Applicants have pointed out that Lady Justice Kasango did not take into account the pendency of the Applicants application for review dated 1<sup>st</sup> March 2003. I have carefully perused the record and it is clear that the application for review dated 18<sup>th</sup> March 2003 was served upon the firm of Wahome Gikonyo & Co. Advocates which appeared for the Respondents. The aforesaid firm filed grounds of opposition dated 7<sup>th</sup> May 2003 to oppose the motion. What is apparent from the record is that the aforesaid motion was and is still pending. The same was filed by Theru Ndirangu and Wamuhu Ndirangu. When the summons dated 27<sup>th</sup> October 2008 came up for interpartes hearing, Mr. Wahome, learned advocate for the Respondents simply told Lady Justice Kasango that there was no appeal since the same had been summarily rejected by Justice (retired) J.V.O. Juma. Mr. Wahome was the only party who was well versed with the goings in the file. I do not expect the Applicants who came late into the matter to know every detail of the case. Being an officer of the court, Mr. Wahome should have disclosed to Lady Justice Kasango the pendency of the motion dated 18<sup>th</sup> March 2003 in which the deceased appellants had sought for the order summarily rejecting the appeal to be set aside by review. In my view I am convinced that the applicants have shown that had the issue been disclosed to Lady Justice Kasango, she could not have dismissed the application. That is a sufficient ground which entitles me to exercise my discretion of review in favour of the Applicants.

In the end I allow the motion dated 9<sup>th</sup> September 2009 by setting aside the order dismissing the summons dated 27<sup>th</sup> October 2008 and substituting it with an order allowing the same with costs abiding the outcome of the Appeal and the motion dated 18<sup>th</sup> March 2003.

**Dated and delivered this 3<sup>rd</sup> day of June 2011.**

**J.K. SERGON  
JUDGE**

In open court in the presence of Mr. Chweya holding brief Wahome Gikonyo for the Respondents and the Applicant in person.