



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Succession Case 2804 of 1999

IN THE MATTER OF THE ESTATE OF NJUGUNA MWATHI (DECEASED)

RULING

Before me is the Summons dated 20th December, 2005 under Order XLIV Rule 1 of Civil Procedure Rules, Sec.3A of the Civil Procedure Act (Cap 21 Laws of Kenya) and Rules 49 and 73 of the Probate and Administration Rules made under the Laws of Succession Act (Cap. 160 Laws of Kenya) (hereinafter referred to as '*the Rules*').

It seeks to review and/or vary ruling made by Hon. Lady Justice Koome on 23rd May, 2005. The said ruling dismissed the application dated 27th February, 2001 made by the present applicant seeking revocation of grant made to the Respondent herein.

The application is supported by the grounds on the face thereof and on supporting affidavit of the Applicant sworn on 20th December, 2005.

The application is opposed as per replying affidavit sworn by the Respondent on 28th February, 2006.

As per Rule 63 of the Rules, provisions of Order XLIV of Civil Procedure Rule are applicable to the proceedings under the Rules and thus the prayer sought can be heard and determined by this court.

The Learned Counsel for the Respondent also contended that the application is not properly before the court as the Advocates now on record has not obtained the leave of the court to represent the Applicants as enjoined in Order III Rule 9A of Civil Procedure Rules. The said order, as per Rule 63, is not the one manifestly applicable to the proceedings under the Act and the Rules. Thus I shall not debar the Applicant to be heard only on that ground. I also do not want to set any precedent to that effect in this application, which is not appropriate for such breaking grounds, in my opinion.

What the applicant has done is to shift the blame solely on the shoulders of his previous Advocates by averring and contending that his Advocate has never informed him of any dates set for hearing of his application for revocation.

Apart from the fact that his contentions are not confirmed or otherwise, I do see a totally different picture, from reading of the proceedings before the court.

At the very first appearance before the court on 19th February, 2002, the adjournment was sought by his advocate on the ground that his client was not responding. Apart from non-representation from his advocate, mostly the adjournments were sought by the applicant's Advocate.

Even during the last hearing, the Applicant's Advocate sought for an adjournment on the ground that the applicant has not visited his offices for further instructions and he was unable to trace his client.

Thereafter, on application by the Respondent's Counsel, the Hon. Koome J. refused the adjournment and dismissed the application.

In his affidavit, without mentioning the date of his one personal visit to the office of his previous Advocate, the Applicant wants me to believe that since his filing of the application on 27th February 2001 he has not received any communication from his Advocate and that apart from one visit, he did not go back to check on his case. Further more without showing any proof, he avers that the letter dated 5th September, 2005 from Kiambu Land Registrar was received by him on 23rd November, 2005. He has also annexed the said letter to his affidavit which does not show any date of receipt.

Even though, it could be true, which I do not believe to be so, he has not explained once again a delay of almost a month after he became aware of this order.

I am not satisfied, from the above mentioned, that the applicant has shown any sufficient cause to vary or review the order of 23rd May, 2005 or that he has satisfied me that he had reasonable explanation for the delay of more than six months in filing this application.

The court does not have to look into the interest of only one party, who in my view, was the cause of delay and was not vigilant.

The Respondent has been unable to proceed with the matter to finalization due to the applicant stretching his legs without good cause.

In the premises, I dismiss the application dated 20th December, 2005 with costs.

K.H. RAWAL

JUDGE

27.3.2006