

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

Succession Cause 1834 of 2000

IN THE MATTER OF THE ESTATE OF EUNICE WANJERI KIBIA – (DECEASED)

RULING

The applicant Samuel Gathaiya Kibia has filed an amended summons dated 24th June, 2005 for review of the orders made by Hon. Lady Justice Koome on 3rd December, 2004 who has been transferred to Nakuru High Court.

Obviously, this application is filed after more than six months from the date of orders sought to be reviewed, no explanation for this delay is made by the applicant. I do observe this because it is a trite law that the application for review be made within reasonable time. The lapse of six months cannot be said to be reasonable time.

Be that as it may be, it is also the trite law that the application for review can be filed in the event of (1) discovery of new and important matter evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him or (2) the decree or order was made on account of some mistake or an error apparent on the face of the record or. (3) on any other sufficient reason.

I shall also state here that this court cannot determine on the validity or otherwise of the decision in law or on facts made by the judge, as it shall tantamount to me sitting in appeal on her decree or orders. Obviously I cannot do so.

The orders sought in the application are:

- 1. For review of the orders made on 3rd December, 2004 and exclude L.R No. Githunguri/Githunguri/2062 and L.R. Githunguri/Githunguri/2061 from the deceased's estate.**
 - 2. An order that ? of L.R. Githunguri/Githunguri/T16/1 be inherited by Samuel Gathaiya Kibia, Kamau Kibia, Muturi Kibia and John Njau Kibia equally.**
- 2A. An Order that L.R. No. GITHUNGURI/GITHUNGURI/2060 to be sold to meet costs of this case and expenses incidental to the administration of this estate.**

The first prayer concerns the two plots which according to the applicant do not belong to the deceased. I may however observe that the applicant does not own those plots and the persons named by him in paragraphs 7 and 8 of his affidavit have not given him an authority to make the application.

I do agree with the Counsel for the Respondent that the applicant lacks the locus standi to seek the orders and I thus reject the same. I also note that the court had considered those properties after observing that the original property known as Githunguri/Githunguri/1029 was subdivided and some of the plots were sold by people one of whom was the applicant who sold Githunguri/Githunguri/2057 and that is why he was excluded from the distribution as per the judgment which is sought to be reviewed.

As regards order No.2, he has contended that the judgment in Githunguri court in Succession Cause

No.88 of 1976 was only misplaced but he has not stated that he was not aware of the same, despite the due diligence made by him. He has also not stated how and why the property ? part of L.R.Githunguri/Githunguri/T161 be distributed to him and two others who were excluded as per the Judgment.

Finally, the last order sought cannot be granted as the order of costs had been made by all the courts mentioned by the Applicant and I cannot sit over appeal against those orders. He has not shown whether there is a mistake or an error apparent on the face of the record. No sufficient reason is shown to enable me grant the same.

In the premises the application before me is dismissed with costs to the respondent.

Dated and signed at Nairobi, this 19th June, 2006.

K.H. RAWAL

JUDGE

19.6.2006.