



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

**Succession Cause 2317 of 2003**

**IN THE MATTER OF ESTATE OF JAMES STEPHANO NGANGA – DECEASED**

**RULING**

This application is brought in by way of Notice of Motion under Order XLIV, Rule 1 of the Civil Procedure Rules and Rules 63 and 73 of the Probate and Administration Rules. It is dated 19<sup>th</sup> May, 2006 but was filed on 20<sup>th</sup> June, 2006 after a month.

It seeks the court to review, vary and set aside its Ruling/Order made herein on the 10<sup>th</sup> May, 2006.

It also seeks a stay of execution pending hearing and determination of this application. Despite it being filed after a month, the same was filed under Certificate of Urgency which was granted without any interim order.

Mr. Mwaura, the Learned Counsel for the Applicant, urged that there is an error apparent on the face of the record in that although this court had held that the will of the deceased was invalid and the estate is an intestate one, the final order of the court was made relying upon the will.

I have carefully re-read my ruling under attack and regret to note that the above submissions are without any basis. The final orders were made in exercise of inherent powers of the court on the new facts which were brought before the court.

I therefore reject the aforesaid contention.

It was further contended that the distribution ordered is unfair as the two properties differ in value. Once again this is not a ground to review the order made. Firstly because no issue on value was made at the time of hearing of the objection and secondly even at the hearing of this application no facts on value have been brought forth so as to enable this court to decide on the ground of new facts not before the court earlier.

It was also contended that having found that the application had no merit, this court ought to have dismissed the application of revocation without any further orders being given.

After rejecting the existence of a will as a basis for revocation of the certificate of confirmation of the grant, it was appropriate to finalize the issue of distribution, because there was no dispute on any facts relating to the properties or the status of the parties.

Even if it was not proper, it is a matter to be decided in an appeal and I cannot review my decision on that ground. That will be unlawful.

The upshot of all the above is that I dismiss the application dated 19<sup>th</sup> May, 2006 with costs.

Dated and signed at Nairobi this 17<sup>th</sup> day of July, 2006.

**K.H. RAWAL**

**JUDGE**

**17.7.06**