



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

**Succession Cause 230 of 1998**

**IN THE MATTER OF THE ESTATE OF MACHARIA GICHURU –DECEASED**

**CHARLES MUTHOGA MACHARIA.....  
.....PETITIONER**

**VERSUS**

**FRANCIS HEZEKIAH GICHUKI.....  
.....OBJECTOR**

**R U L I N G**

By an application dated 23<sup>rd</sup> December 2004 brought under order XLIV and order L of the Civil Procedure Rules and Section 3A and 80 of the Civil Procedure Act, Francis Hezekiah Gichuki who was the objector in this Succession Cause (and hereinafter referred to as the Applicant) seeks orders:-

- 1. That this Honourable Court be pleased to review and or set aside the unsigned and undated ruling or order of Mr. Justice J. V. Juma given on 6<sup>th</sup> December 1999.*
- 2. That the costs of this application be in the cause.*

The grounds upon which the application is brought is stated on the body of the affidavit as follows:-

- a) That there is an error apparent on the face of the record as the learned Judge did not mark the exhibits which the applicant brought in court.*
- b) That the applicant cannot appeal against undated or unsigned ruling or order of the Learned Judge.*
- c) That the applicant has lodged a complaint against the learned Judge who is now under suspension following the orders of His Excellency Hon. President Kibaki appointing a Tribunal to investigate the conduct of the learned Judge.*

The application is also supported by an affidavit sworn by Francis Hezekiah Gichuki in which He maintains that his witnesses were not given a chance to testify and that the exhibits He produced were not marked by the Judge and are missing from the court record and further that He was supplied with a copy of a ruling which was not signed nor was it dated.

Having considered this application and perused the court record I find that the application is based on facts which are clearly not substantiated.

First, It is alleged that the ruling delivered by Juma J. was undated and unsigned. However the court record contains a ruling handwritten signed and dated by Hon. Juma J.

Secondly, It is contended that there was an error apparent on the face of the record as exhibits produced by the applicant were not marked and are missing from the court records. The proceedings however do not show that the applicant made any reference to any documents or exhibits. His allegation that He produced exhibits cannot therefore be true.

Thirdly, the fact that the applicant has lodged a complaint with the Tribunal against Hon. Juma J. cannot be a basis for setting aside his ruling as the complaint remains no more than an allegation yet to be proved.

It is noteworthy that the advocate for the applicant did not pursue any of the grounds stated in the body of the application but introduced a completely new ground. This was highly irregular. In any case that ground cannot also stand as the temporary letters of administration were issued to the Petitioner and the objector jointly on 22<sup>nd</sup> April 1997 through a consent order and the objector cannot now be heard to complain of the same.

I find that the applicant has not proved that there is any error apparent on the face of the record to justify a review of the ruling delivered by Justice J. V. Juma on 6<sup>th</sup> December 1999. Accordingly the application dated 23<sup>rd</sup> December 2004 is dismissed with costs to the Petitioner.

Orders accordingly.

***Dated, signed and delivered this 26<sup>th</sup> day of April 2005.***

**H. M. OKWENGU**

**JUDGE**