

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 137 OF 1996

VERONICAH WAIRIMU KIHANYAAPPLICANT
VERSUS
AUGUSTINE MWAURA KIHANYARESPONDENT

R U L I N G

I must confess and say this application has no merit and that it ought to be dismissed with costs.

The grounds stipulated in order XLIV Rule 1 of the Civil Procedure Rules upon which the court can exercise its discretion to make an order for review are not the ones upon which the present application is based.

In any event, even if these were cited and submitted upon, the applicant had an uphill task to convince this court that an application filed in court on 28th November, 2002 to review an order of court made on 14th June 2000 is not bad for being filed inordinately late without offering a valid reason for such a delay.

Looking at the application the other way, a beneficiary who has been given a life interest in any property, has only full use and enjoyment of it during his or her lifetime and there are no other rights say, being registered as proprietor thereof, selling the same or transferring such rights to heirs or third parties.

Counsel, for both parties, who are considered experts on these matters, should be in a position to advise their clients about such rights rather than filing such absurd applications in court like the present one.

Prayer 2 of the application suggests that an order be made granting the applicant 3 acres portion of the suit land which cannot be in view of the order of the court allowing the appellant – applicant to enjoy only a life interest in the same.

No order is required in respect to prayer 3 as counsel for the respondent is expected to advise him about the applicants life interest in the property which include the right to reside there with a roof over her head, and to use it during her life time only.

For these reasons, this application is unmeritorious and without any basis, and should be and is hereby dismissed with no order for costs.

These are the orders of this court.

Delivered and dated this 29th day of January, 2003.

D.K.S. AGANYANYA

JUDGE