



REPUBLIC OF KENYA



**In re Estate of Jane Wambui Gatonye (Deceased) (Succession Cause
877 of 2007) [2024] KEHC 5212 (KLR) (Family) (17 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5212 (KLR)

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

FAMILY

SUCCESSION CAUSE 877 OF 2007

MA ODERO, J

MAY 17, 2024

ESTATE OF JANE WAMBUI GATONYE (DECEASED)

RULING

1. Before this Court for determination is the chamber summons dated 13th December, 2022 by which the Petitioner Lucy Nyokabi Wambui seeks the following orders:-
 1. Spent
 2. Spent
 3. Upon hearing of this application inter-partes, this Honourable court be pleased to review the orders made on 17th November, 2022, and in place thereof make an order directing that Jane Wanjiku Ngugi (The Objector), submit detailed and accurate accounts regarding rents received in respect of title no. Limuru/Kamirithu/T.128 and Scheme no. 332) from 2013 to date.
 4. Upon hearing of this application inter-partes, this Honourable court be pleased to review the orders made on 17th November, 2022, and in place thereof make an order extending the time to submit detailed and accurate accounts regarding rents received in respect of the said properties by 45 days from the date this application dated 13th day of December 2022 is determined.
 5. Upon hearing of this application interpartes, this Honourable court be pleased to review the orders made on 17th November, 2022, and issue any other orders or directions as it may deem fit in the circumstances.
 6. The costs of this application be in the cause.
 7. That it is the wider interest of justice that the orders sought herein be granted.”
2. The application which was premised upon Section 47 of the *law of Succession Act* Cap 160, Laws of Kenya, and Rules 49 of the *Probate and Administration Rules* was supported by the Affidavit of even date sworn by the Petitioner.



3. The Respondent/Objector Hellen Wangare Wambui opposed the application. The matter was canvassed by way of written submissions. The Petitioner filed the written submissions dated 8th June, 2023 whilst the Objector relied upon her written submissions dated 30th June, 2023.

Background

4. This Succession cause relates to the estate of the late Jane Wambui Gatonye (hereinafter ‘the Deceased’) who died on 28th December, 2006. A copy of the Death Certificate Serial No. xxxx appears Annexure ‘CDI’ to the supporting Affidavit dated 20th March, 2007.
5. The Deceased died testate having left behind a written will dated 27th September, 2005.
6. The Deceased was survived by the following persons;-
 - (i) Susan Ann Wanjiku - Daughter
 - (ii) Hellen Wangare Wambui - Daughter
 - (iii) Jane Wanjiku ngugi - Daughter in-law
 - (iv) Lucy Nyokabi Wambui - Daughter in-law
7. In her written will the Deceased appointed her daughter Ms. Lucy Nyokabi Wambui as Executor and Trustee of the Estate.
8. There has been much litigation over this estate but of essence is the Ruling delivered by Hon. Justice Muchelule (as he then was) on 17th November, 2022 in which the Court directed the Petitioner Lucy Nyokabi Wambui to file and serve within sixty (60) days detailed and accurate account of all rental income received in respect of the property known as Dagoretti/Kangemi/T-378 (hereinafter ‘Plot T-378’) with effect from 16th May, 2013 to the date of the ruling.
9. Instead of complying with that ruling and filing the accounts as directed the Petitioners opted to file this present application seeking to review the Ruling of 17th November, 2022.
10. Section 80 of the [Civil procedure Act](#), Cap 21 laws of Kenya provides as follows:-

‘Any person who considers himself aggrieved –

 - a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred;
 - or
 - b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgement to the court, which passed the decree or made the order, and the court may or make such order thereon as it thinks fit.
11. Order 45 Rule 1 of the [Civil Procedure Rules](#), 2010 provides as follows:-

“ Any person considering himself aggrieved –

 - a. by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or



- b. by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for review of judgement to the court which passed the decree or made order without unreasonable delay.”
12. In the case of *Republic v Advocates Disciplinary Tribunal Exparte Apollo Mboya* (2019) eKLR, Mativo J. the court held that:-
- “A clear reading of the above provisions shows that Section 80 gives the power of review while Order 45 sets out the rules. The rules restrict the grounds for review. They lay down the jurisdiction and scope of review. They limit review to the following grounds –
- a. discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or the order made or;
- b. on account of some mistake or error apparent on the face of the record, or
- c. for any other sufficient reason and whatever the ground there is a requirement that the application has to be made without unreasonable delay.”
13. The first ground upon which a judgement/ruling may be reviewed is the discovery of new and important evidence. The Applicant has not alleged that she has discovered new or important evidence which was not within her knowledge at the time when the application dated 29th September, 2020 was being canvassed.
14. The second ground for review is an error apparent on the face of the record. Such an error must be obvious from the face of the record. It must not be matter of argument, conjecture, allegation or implied.
15. The Petitioner claims that there exists an error apparent on the face of the record being that the Hon. Judge (as he then was) ordered only the Petitioner to submit accounts but did not order the Objector Jane Wanjiku Ngugi to also file accounts.
16. The Petitioner claims that the orders made by the Hon. Judge were discriminative and unfair towards her.
17. Review is not a remedy for orders/decrees which the Applicant may consider discriminative. The grounds upon which a review may be granted are clearly set out in Order 45 Rule I and discrimination is not one of those grounds.
18. I have keenly perused the Ruling delivered on 17th November, 2022. The Hon. Judge (as he then was) gave clear reasons as to why the orders he was to make would be directed only to the Petitioner. At paragraph 6 of that Ruling the court stated as follows
- “Further the accounts that were ordered on 11th December, 2014 were against Jane Wanjiku Ngugi and in respect of Limuru/Kamirithu/T-128 and Plot 332 Kayole Resettlement Scheme. The present request is in respect is in respect of Dagoretti/Kangemi/T-378 and



against the respondent. The request has not been heard and determined by any court of competent jurisdiction and is therefore not ‘resjudicata’. The application for accounts is neither defective nor an abuse of the process of the Court. [Own emphasis].

19. It is clear from the above that the objector Jane Wanjiku Ngugi had already been ordered to provide accounts in respect of a different property. Indeed a close perusal of the file reveals that in a Ruling delivered by Hon. Justice William Musyoka on 11th December, 2014 the Judge directed as follows
 - “(a) That Jane Wanjiku Ngugi shall prepare and file in court within thirty (30) days an account of her handling of Limuru/Kamirithu/T-128 and Plot 332 Kayole Resettlement Scheme from the date of the deceased’s death on 28th December, 2006 to date”
20. The Petitioner herein is trying to cloud issues. She is attempting to drag in the Objector yet the orders of 17th November, 2022 were directed specifically at herself. I find no evidence of an error on the face of the record. The Hon. Judge has clearly explained the reasons why his orders to file accounts were directed to the petitioner only.
21. If the Petitioner is aggrieved by the orders made on 17th November, 2022 then her remedy was in filing an appeal not in seeking a review. The present application is frivolous, baseless and amounts to an abuse of court process. I find no merit in the same. The summons dated 13th December, 2022 is hereby dismissed in its entirety. Costs will be met by the Petitioner.

Dated in Nyeri this 17th Day of May, 2024.

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MAUREEN A. ODERO

JUDGE

