



**In re Estate of Gideon Muthomi M'Tierandu (Deceased) (Succession Cause 160 of 1997) [2024] KEHC 5728 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5728 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 160 OF 1997**

**TW CHERERE, J**

**MAY 9, 2024**

**N THE MATTER OF THE ESTATE OF GIDEON MUTHOMI  
M'TIERANDU (DECEASED)**

**AND**

**IN THE MATTER OF APPLICATION FOR STAY OF EXECUTION**

**BETWEEN**

**ZIPPORAH KARAMBU MUTHOMI ..... APPLICANT**

**AND**

**TSILLA NKIROTE ..... 1<sup>ST</sup> RESPONDENT**

**JANE KATHAMBI RANGU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By an order dated 15<sup>th</sup> February, 2024, this court granted an order of stay of ruling dated 27<sup>th</sup> April, 2013 pending hearing and determination of Nyeri Civil Appeal No. E107 OF 2023 on the mistaken believe that the summons for stay pending appeal dated 20<sup>th</sup> September, 2023 was not opposed.
2. It has been brought to the attention of the court, which fact the court has confirmed and has seen a copy annexed to the supporting affidavit of the Applicant sworn on 19<sup>th</sup> February, 2024 that indeed the Applicant had filed a replying affidavit on 07<sup>th</sup> December, 2023 but for some unknown reason the said affidavit was not placed in the court file.
3. Order 45 of the Civil Procedure Rules provides as follows:
  1. (1) Any person considering himself aggrieved-
  - (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 a review of judgment to the court which passed the decree or made the order without unreasonable delay.

4. In the case of National Bank of Kenya Limited v Ndungu Njau [1997] eKLR, the Court of Appeal stated: -

“A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should require no elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review.”

5. From the foregoing, I find that the Applicant has demonstrated sufficient cause for this court to review its orders issued on 15<sup>th</sup> February, 2024 and to avail the Applicant an opportunity to be heard on the summons dated 20<sup>th</sup> September, 2023.

6. It is therefore hereby ordered:

1. Application dated 19<sup>th</sup> February, 2024 for review of the orders issued on 15<sup>th</sup> February, 2024 is allowed
2. The orders dated 15<sup>th</sup> February, 2024, for stay of ruling dated 27<sup>th</sup> April, 2013 pending hearing and determination of Nyeri Civil Appeal No. E107 OF 2023 are set aside
- 3 Ruling on application dated 20<sup>th</sup> September, 2023 on 23<sup>rd</sup> May, 2024
- 4 Parties are at liberty to file submissions if they so wish

**DELIVERED AT MERU THIS 09<sup>TH</sup> \_\_\_\_\_ DAY OF MAY 2024**

**T. W. CHERERE**

**JUDGE**

Appearance

Court assistants - Kinoti/Munene

For Applicant - Mr. Otieno for Otieno Obwanda & Co. Advocates

For Protestor - Mr. Mwanzia for Muia Mwanzia & Co. Advocates

For Beneficiary - Mr. Muriuki for Mbogo & Muriuki Advocates

