



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Gichugu Gicheru (Deceased) (Succession Cause 709 of 2002)
[2023] KEHC 3064 (KLR) (Family) (13 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3064 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 709 OF 2002
EKO OGOLA, J
MARCH 13, 2023
IN THE MATTER OF THE ESTATE OF GICHUGU GICHERU (DECEASED)**

BETWEEN

DAVID GICHUNGU GICHERU APPLICANT

AND

CYRUS KAMANDE NJOROGE 1ST RESPONDENT

REUBEN MWANGI MBOGONYE 2ND RESPONDENT

BATH WANJIKU KABATHA 3RD RESPONDENT

WANJIRU NDIRANGU 4TH RESPONDENT

SAMSON MWENJA 5TH RESPONDENT

RULING

1. Before the court for determination is the Notice of Motion application dated 26th September 2021 brought under Certificate of Urgency in which the Applicant herein David Gichungu Gicheru seeks the following Orders:
 1. Spent
 2. That this honorable court be pleased to review the judgment issued the honorable Lady Justice Ali Aroni on 10.06.21
 3. That this honorable court be pleased to admit the Applicant's submissions dated 02.07.20
 4. Any other order that this Honorable Court may deem fit in the circumstances



2. The application is premised upon sections 1A, 1B and 3A and 80 of the *Civil Procedure Act* Cap 21 Laws of Kenya; Order 45 Rule 1, Order 51 Rule 1 of the *Civil Procedure Rules*, 2010 and all other enabling provisions of the Law. It is based on the grounds set out therein and supported by the Affidavit of even date sworn by Donald B. Kipkorir. The deponent is also the Advocate on record for the Applicant.
3. The Applicant's case is that on 10th June, 2021, Lady Justice Ali Aroni issued a judgment dismissing the Applicant's application for revocation of Grant. The Advocate requested for a copy of the Judgement on 18th June 2021 and also lodged a Notice of Appeal on the same date.
4. The deponent deposes that when they received a copy of the judgment they were shocked to learn that the Judge did not consider the Applicant's submissions as they were not filed. The deponent further deposes that the submissions were filed by a counsel who is no longer with the firm representing the Applicant; and that the filing was done during the transition into the e-filing system when there was still confusion. The Applicant pleads that the Applicant should not be punished due to the inadvertence of his counsel.
5. In response the Respondent filed Grounds of opposition dated 22nd September, 2022 opposing the Application as follows: -
 1. That this instant application is misconceived and non-starter
 2. That the Application does not meet the standards set out for review as envisioned in Order 45 rule 1 of the Civil Procedure Rules
 3. That the Application is frivolous, bad in law and an abuse of the court process and the same should be dismissed with costs.
6. The parties filed submissions. The Applicant's submissions are dated 8th December, 2022 while the respondent's submissions are dated 31st October, 2022.

Determination

7. I have considered the Application, the Grounds of Opposition and the Written Submissions by the parties. The issue arising for determination is whether this court should grant the review orders as prayed.
8. The Applicant is seeking to have the orders of stay issued by Hon Lady Justice Ali Aroni on the 10th of June 2021 reviewed.
9. Section 80 of the *Civil Procedure Act* provides that: -

Any person who considers himself aggrieved-

 - a) By a decree or order in which an appeal 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 judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.
10. The provisions of Order 45 Rule 1 provides for the review of a decree or order as follows: -
 1. (1) 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 from whom 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 the judgment to the court which passed the decree or made the order without unreasonable delay.
11. There are three limbs which are discernible from part (b) above
- a) Discovery of new and important matter or evidence.
 - b) Mistake or error apparent on the face of the record.
 - c) Any other sufficient reason.
12. In Republic v Public Procurement Administrative Review Board & 2 Others the court held that: -
Section 80 gives the power of review and Order 45 sets out rules. These rules restrict the grounds for review. The rules lay down the jurisdiction and scope of review.
13. Review can also be allowed for any other sufficient reason. The expression sufficient reason means a reason sufficiently similar to those specified in the rule.
14. The Applicant has submitted that the ground upon which he is seeking review is that there was an omission which occurred when the judgment was delivered in exclusion of the Applicant's submissions; that the omission occurred due to the issue of the e-filing system which was at the infant stages and also the inadvertence of Advocate who was in conduct of the matter.
15. I have carefully perused through the file and found that the Applicant has not provided this court with any evidence of the submissions signed by the said Advocate who was in conduct of the matter. There is also no evidence that the applicant's Advocate tried to file the said submissions and they failed to reflect in the e-filing system.
16. The Applicant needed to show that there was indeed an omission by proving that there were submissions and that the e-filing system failed.
17. From the foregoing, this Court finds no merit in the Application of 26th September, 2021 and the same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF MARCH 2023.

E.K. OGOLA

JUDGE

Ruling read and delivered in chambers online in the presence of:

M/s Anyango for the Applicant

M/s Njeri for the Respondents

Ms. Gisiele Court Assistant

