



In re Estate of the Late Jonathan Chege Nguyai (Deceased) (Succession Cause 1341 of 2002) [2024] KEHC 14109 (KLR) (Family) (14 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1341 OF 2002
HK CHEMITEI, J
NOVEMBER 14, 2024
IN THE MATTER OF THE ESTATE OF THE
LATE JONATHAN CHEGE NGUYAI (DECEASED)**

BETWEEN

DAVID KAMARI APPLICANT

AND

MARGARET NJOKI NGUYAI RESPONDENT

RULING

1. In the Applicant's Notice of Motion dated 29th June 2023, the Applicant has sought orders of review and setting aside the orders of this court dated 12th June 2023 in which it allowed the Respondents application dated 13th August 2021.
2. The application is based on the grounds thereof and the sworn affidavit of Dr. Khaminwa dated the same date. The substratum of the application is that the Applicant was not notified of the date when the matter was to come up before the court and therefore, they were not present when the orders were granted.
3. The Respondent through her replying affidavit sworn on 25th September 2023 has opposed the same stating that the Applicant had not Respondent to her application by the time the matter came up in court and that was the reason why the court allowed her application.
4. She further deponed that the Applicant had been in the habit of delaying this matter severally and it therefore informed the reason why the court granted her the orders.



Analysis and determination.

5. I have perused the application as well as the courts records herein and the history of this matter.
6. It is clear that on 17th May 2023 the court granted the Applicant 14 days to file a reply to the Respondent's application dated 13th August 2021. The matter was thereafter scheduled for mention on 9th June 2023.
7. On the said date the courts record does not indicate any activity. The matter was then mentioned on 12th June 2023 in the presence of the counsel for the Applicant who informed the court that the Applicant herein had not filed any response to the application dated 13th August 2021 despite several opportunities granted.
8. The court acknowledged this position and proceeded to allow the application prompting the Applicant to react by filing the application herein.
9. Without belaboring the point it is trite law that an application under Section 80 of the Civil Procedure Act and Order 45 rule 1 thereof for review will only stand if among others there was found a new and an important point which the court taking reasonable diligence was unable to appreciate at the time it made the order. In other words, the Applicant must have discovered something new or there was an error apparent on the face of record.
10. I have perused the courts proceedings and it appears to me that the date 12th June 2023 was not granted in court. Probably it was granted by the registry. Even then, there was no evidence of such and more importantly there is no evidence of service upon the Applicant and or his counsel on record.
11. In the absence of such the court proceeded I suppose under an impression that all the parties were aware. It must be noted that essentially the matter was to be mentioned on 9th June 2023 but the court for reasons which are not on record was not sitting and that is why the date of 12th June 2023 was issued.
12. It is possible that the Applicant had not filed any response to the application dated 13th August 2021 and that is why the court allowed it. Nonetheless the Applicant was not aware of the date of 12th June 2023.
13. In my view therefore the Applicant is right in claiming that he was condemned unheard. He was not aware of the proceedings of 12th June 2023. There was no evidence of notice to him or his counsel. This is a valid ground which the attention of the court was not drawn to.
14. In the premises the application is merited and is hereby allowed.
15. So as not to delay the matter again the Applicant is hereby granted 7 days to file and serve any reply to the Respondent's application dated 13th August 2021.
16. Costs of this application shall be to the Respondent.

DATED SIGNED AND DELIVERED VIA VIDEO LINK AT NAIROBI THIS 14TH DAY OF NOVEMBER 2024.

H K CHEMITEI

JUDGE

