



In re Estate of the Late David Kamuiru Muuru (Deceased) (Succession Cause 1732 of 2015) [2024] KEHC 13832 (KLR) (Family) (7 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13832 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1732 OF 2015
HK CHEMITEI, J
NOVEMBER 7, 2024
(FORMERLY KIAMBU SUCC CAUSE NO. 130 OF 2000)
IN THE MATTER OF THE ESTATE OF THE LATE DAVID KAMUIRU MUURU (DECEASED)**

BETWEEN

FLORENCE MUKAMI KAMUIRU APPLICANT

AND

EVANS GITAU KAMUIRU RESPONDENT

RULING

1. The application by the Applicant herein dated 5th March 2020 seeks orders that:-
 - (a) The court be pleased to discharge, set aside, review and or vary the ruling and orders made herein on 19th February 2020 and reinstate the Applicant's application dated 13th July 2015.
2. The application is based on the grounds thereof and the sworn affidavits of one Edwin M Njiru the Applicant's advocate and Joseck Kairithia his court clerk both dated the same date.
3. The gist of the application is that the said advocate was unable to attend court on the material day because his client had suffered stroke and was bedridden and his wife had undergone some surgery. He attached copies of hospital discharge summary for both his wife and the Applicant.
4. He deponed that he had instructed his court assistance to notify the court of his client's predicament as well as his own and have the matter taken out.
5. His court clerk deponed that he sought an assistance of one Mr. Mugu advocate on the material day whom he requested to hold brief for his boss. Apparently, the court did not accede to their request and proceeded to dismiss the application.



6. The Applicant therefore implores this court to review the said dismissal as it was occasioned by factors beyond her means.
7. The Respondent vide his replying affidavit sworn on 16th March 2022 deponed that the application was yet another attempt by the Applicant to derail the just conclusion of this matter. The Respondent went ahead to give a chronology of the history of this cause in which the Applicant has caused numerous delays right from the trial at the lower court.
8. It was his case that the court was right in dismissing the application for there was no apparent reason and that it recognised that this was among many other matters which the Honorable Chief Justice had directed that they ought to be dealt with expeditiously.
9. The court directed the parties to file written submissions which they complied. The court has perused extensively together with the cited authorities and does not wish to repeat the same here.
10. Order 45 rule 1 of the [Civil Procedure Rules](#) which sets out the grounds for review is worth reproducing here. The same states:-

“ 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 a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

11. Does this application fall within the grounds anticipated by the above law? In other words, is there a new and an important matter which could not have been discovered or known by the trial court? Is there any sufficient reason? Has the application been made without undue delay?
12. I have no doubt in my mind that the court was right in dismissing the application for the reasons it did. The application had indeed been brought by way of urgency and the Applicant had to prosecute expeditiously.
13. However, the medical reasons backed by the reports both for the Applicant and her counsel’s wife persuades this court to consider the application positively. In my mind, had the court been notified of the medical condition of the counsel’s wife specifically I think it would have considered an adjournment or such other relief other than dismissing the application.
14. The medical condition of the Applicant may not have been a strong case to allow the application for adjournment considering that what was before it was an application and did not require her presence.
15. This court agrees that the application ought to have been dealt with considering its history including the ruling by many judicial officers, notably Justice Farah Amin.
16. Needless to state that it appears from the history that most of the adjournments have been occasioned by the Applicant although at times the Respondent.



17. The discretion of this court is what is being called for. Order 45 rule 1 is essentially discretionary and this court for now shall apply it in favour of the Applicant. The court takes the view that the challenge was with the counsel and not the litigant. It was not as rightly put that one would have foreseen that the Counsel's spouse will be unwell, admitted and goes through a surgical procedure. Such rear circumstances grant the court to consider its discretionary powers and apply as the case herein.
18. I also find that the efforts he made through his court clerk is a mitigating factor. The application was made expeditiously as well.
19. Being an estate issue, it is necessary that the parties are granted an opportunity to ventilate issues pertaining their inheritance without of course taking advantage of each other.
20. The Respondent shall however be compensated by costs as they have proved his effort to have this matter resolved for almost two decades.
21. In the premises, the application is allowed as hereunder:-
 - (a) The application is hereby allowed, this courts orders dated 19th February 2020 are hereby reviewed and set aside and the application dated 13th July 2015 is reinstated.
 - (b) The Applicant shall pay to the Respondent throw away costs of Kshs 20,000 payable within 30 days from the date herein and in default the Respondent be at liberty to execute.

DATED SIGNED AND DELIVERED AT NAIROBI VIDE VIDEO LINK THIS 7TH DAY OF NOVEMBER 2024.

H K CHEMITEI

JUDGE

