



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 33 OF 2006

IN THE MATTER OF THE ESTATE OF THE LATE FESTO MALOBA OBIRI(DECEASED)

LONAH KAVULANI OBIRI.....APPLICANT

VERSES

TERESA MMBONE OBIRI.....RESPONDENT

RULING

1. On the 5th day of September 2019 this court gave directions regarding three applications pending herein dated 28th December, 2018, 31st July, 2019 and 18th August, 2019. It decided that the application dated 28th December, 2018 be heard first and the other two be held in abeyance. On the same breath parties were granted leave to file and exchange further affidavits and later to file written submissions in respect to the said application.

2. When the same came up for hearing the court reserved the ruling for 18th December, 2019. However, on the 27th November, 2018 the applicant through her counsel wrote a letter to this court asking that the ruling should not be delivered and file an application dated 19th November, 2019 in which she has prayed for the following orders;

(A) the directions issued on the 5th November, 2019 be reviewed and or set aside.

(B) the ruling to the summons dated 28th December, 2018 be vacated until directions are given to the notice of motion dated 18th September, 2019 seeking stay of proceedings to the summons dated 28th December, 2018 and leave to consolidate and amend the summons dated 18th September, 2017 and 28th December, 2018.

3. The application is supported by the affidavit of **CAXSTONE P. KIGATA** Counsel for the Applicant. He states that the “*application dated 18th September, 2019 has to take precedence as it seeks to stay the summons the subject of the ruling and further consolidate and amend the said summons and the earlier summons dated 18th September 2017 to which no directions were given at all.*”

4. The substratum of this application seeking review is to the effect that the court ought to have heard first the application dated 18th September, 2019.

5. The Respondent has opposed the application vide her replying affidavit dated 13th January, 2020 in which she has stated that the same is misconceived and bad in law as the application for direction cannot be subject to review. That the applicant has 5 pending applications on record and already the application dated 28th December, 2018 has been heard by way of written submissions which the Applicant has equally complied.

6. The court ordered the parties to file written submissions which they have done and this court does not intent to reproduce the same here. The court has equally perused the authorities cited by the parties.

7. The gist of the Applicant’s application is a review of the orders of directions given on 5th November, 2019. The Applicant is aggrieved and she feels that the court should have heard other applications first.

8. The grounds for review are found under Section 80 of the Civil Procedure Act as well as Rule 45 (1) of the Civil Procedure Rules. The latter states that;

(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 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.”

9. For such an application to succeed there must be a new an important matter or evidence or error on the face of the record and any other sufficient cause.

10. The same was well captured in the case of **NATIONAL BANK OF KENYA V. NDUNGU NJAU (1997) e KLR** where the court stated that;

“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 not require an 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.”

11. The directions given by the court on the 5th November, 2019 are not onerous on any party. The court simply studied the applications and found that the best way to deal with this long and protracted matter was to put on hold some of the applications and to determine the one that would almost sum up the issues raised. It would be superfluous to listen and give a ruling on every application on record as the issues raised in all of them are challenging the grant herein.

12. In the premises this court does not find any new and an important matter which had not been taken into account at the time of giving directions. The applicant in any event has responded to the application which ruling she sought to arrest. At any rate it is the prerogative of the court to manage the running of the case provided the parties are given adequate opportunity and chance to be heard.

13. The Applicant cannot therefore dictate on which application should come first as what is important is for the sticky and thorny issue of the grant to be determined. The only option therefore if the applicant was dissatisfied was to file an appeal against the directions given. Nonetheless this court does not see any prejudice suffered by the Applicant.

14. In any event the application dated 18th September ,2019 has been held in abeyance pending the determination of the application dated 28th December 2018. In the event that the ruling does not touch on the issues raised in the said application, nothing stops the applicant from moving the court.

15. The summary of the directions of the court was to fast track the matter. It is noted that all the applications generally have been filed by the Applicant. The courts duty is to ensure that fair determination is done to all the parties including the Applicant who are all claiming an interest in the estate. More importantly the precious judicial time is not wasted on technicalities and interim applications which may not determine the matter exhaustively.

16. For now, the application is dismissed. The same does not meet the threshold provided under rule 45 of the Civil Procedure Rules above. Costs shall be in the cause.

17. Having stated so the court separately shall proceed to deliver the ruling which had been halted by this application in respect to the application dated 28th December, 2018.

Dated, signed and delivered via Zoom at Kitale on this 5th day of May, 2020.

H. K. CHEMITEI

JUDGE

5/5/2020