

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 423 OF 1986

IN THE MATTER OF THE ESTATE OF GITHUA MURIU MWANIKI - (DECEASED)

AMOS NG'ANG'A.....OBJECTOR/APPLICANT

VERSUS

EUNICE WANJIRU.....1ST RESPONDENT

SAMUEL NJOGU.....2ND RESPONDENT

RULING

1. The dispute between the applicant Amos Ng'ang'a Githua and the respondents Eunice Wanjiru Githua and Samuel Njogu Muriu is whether the deceased Githua Muriu Mwaniki left one widow (the 1st respondent) or had a second widow Gladwel Kanyi Githua (the mother of the applicant). The applicant claimed to be a son of the deceased. The deceased died intestate on 18th January 1986. The dispute was heard through oral evidence. In a judgment delivered on 7th March 2018 this court found that the deceased had only one widow (the 1st respondent), and that the applicant was not a son of the deceased.

2. In the Motion dated 23rd August 2018 the applicant came under **Order 45 of Civil Procedure Rules Section 1A, 1B and 3A of the Civil Procedure Act and Rule 63 of the Probate and Administration Rules** seeking to have the court review, vary and/or set aside its judgment dismissing his application filed on 20th January 2010. The grounds were that there was an error apparent on the face of the record and that there was sufficient cause to justify the review of the decision. In the supporting affidavit, the applicant's substantial complaint was that the deceased had two houses, a fact known to the respondents, but that only the family of the 1st respondent had petitioned for the grant and obtained a certificate confirming the grant. The applicant was not satisfied with the decision that went against him.

3. Review under **Order 45 Rule 1 of the Civil Procedure Rules** can only issue where there have been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order made; or where there is some mistake or error apparent on the face of the record; or where there is other sufficient reason. The application should be brought without unreasonable delay.

4. The applicant has not placed before the court any new evidence or material. He basically did not agree with the decision that went against him. An erroneous conclusion of evidence or law cannot be a ground for review, but can be a ground for appeal (**Francis Origo & Ano. -v- Jacob Kumali Mungala, [2005]2 KLR 307**).

5. I agree with the respondents' response that the application is without basis, and that court is *functus officio*. The application is dismissed with costs.

DATED and DELIVERED at NAIROBI this 10TH day of JULY, 2019.

A.O. MUCHELULE

JUDGE