

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 951 OF 2014

IN THE MATTER OF THE ESTATE OF JAMENI MUHAVI alias Muhavi KIBIHI, DECEASED

RULING

1. The application for determination is dated 26th March 2018. It is brought at the instance of Maxwell Isaya Kivihya and Priscilla Ligaga Kamonya, seeking review of orders made in the judgement of 30th November 2017.
2. It seeks stay of execution of the judgment to await the outcome of the application, as well as review of the distribution ordered by the court. In the two affidavits sworn in support of the application, it is conceded that Priscilla Ligaga Kamonya, a daughter of the deceased and an interested party in the proceedings, had indicated to court that she was not interested in getting a share of the estate, but she now says that she is in fact interested and that she renounced her right because she was under pressure to do so. The redistribution proposed in the application is so as to accommodate her interest.
3. The reaction to the application is by Keta Muhonja Salome. She swore an affidavit on 13th April 2018. She states that it was Priscilla Ligaga Kamonya who stated in open court without any duress from any quarter that she was not interested in partaking a share in the estate of the deceased. She accuses her of afterthought, as she had opportunity in open court to state her interest and when she got the chance she said that she was not interested.
4. Both sides have filed written submissions with respect to the said application. I have read through the same and noted the arguments made therein.
5. I have perused the record. I have noted that the court took oral evidence prior to pronouncing judgement on 30th November 2017. Priscilla Ligaga Kamonya took the stand as DW2. She said that she was not interested in a share in the estate. She in fact expressed surprise that her sister was claiming a share in the estate. She had opportunity to assert her claim at that stage. She chose not to. Her evidence as recorded is clear that she had renounced her interest. She now claims that she was under pressure to renounce, but she has not identified the person or persons who were bringing her under pressure. It would appear to me that she changed stance after her sister Keta Muhonja Salome succeeded in her cause for a share in the estate. It would appear that Priscilla Ligaga Kamonya expected that Keta Muhonja Salome's claim would fail.
6. The application is substantially one for review. In such application it ought to be demonstrated that there is an error apparent on the face of the record, or that the applicant has discovered or stumbled upon very important information material to the case which he did not have at the time of the hearing, or that there exists other sufficient cause for review. The applicants have not sought to demonstrate that their case meets any of the three criteria for review. Looking at the facts as pleaded in the affidavits in support of the application, I do not see material upon which I can exercise discretion and review the orders made in the said judgement.
7. The application dated 26th March 2018 is clearly without merit. I hereby dismiss the same with costs. The applicants have leave of twenty-eight days to challenge this decision at the Court of Appeal.

DATED, SIGNED and DELIVERED at KAKAMEGA this 3RD DAY OF DECEMBER, 2018

W. MUSYOKA

JUDGE