



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 2825 OF 1999**

**IN THE MATTER OF THE ESTATE OF KAMUKII MWETHI (DECEASED)**

**RULING**

1. On 18<sup>th</sup> December 2015 I delivered a ruling herein wherein I dismissed an objection to the making of a grant, which objection had been brought at the instance of Grace Wanjiru Guitati, arguing that she was a daughter of the deceased and therefore entitled to a share in the estate of the deceased.
2. The question as to whether Grace Wanjiru Guitati was entitled to a share in the estate of the deceased had been dealt with earlier in 2002, when Rawal J on 29<sup>th</sup> November 2002 dismissed a similar objection by Grace Wanjiru Guitati based on the law that applied to the estate of the deceased as at the date of his death. Rawal J had made a finding that the law that applied did not allow Grace Wanjiru Guitati to have a share in the estate of the deceased. A grant was then issued to the petitioners upon the dismissal of the objection in 2002. The said grant was later revoked and it was then directed that a fresh one be made on application, it was at that stage that Grace Wanjiru Guitati made a similar objection. I held on 18<sup>th</sup> December 2015 that the second objection was not viable as the finding of Rawal J. on 29<sup>th</sup> November 2002 was still valid so far as the entitlement of Grace Wanjiru Guitati to a share in the estate of the deceased was concerned. I opined that that issue could only be revisited on review.
3. Grace Wanjiru Guitati then lodged an application dated 21<sup>st</sup> March 2016, seeking review of the order made on 29<sup>th</sup> November 2002. Her application is premised on Constitutional provisions, among others. She argues that the law that applied at the date of the deceased's death discriminated against her on the basis of her gender.
4. The application is opposed. The respondent filed grounds of opposition, dated 16<sup>th</sup> May 2016, on 17<sup>th</sup> May 2016. He argues that the matter is *res judicata* in view of earlier orders. It is also averred that the applicant should have appealed instead, and that she was guilty of laches as she is challenging an order made over thirteen years ago.
5. The question for me to address herein is whether the application before me is really available for determination.
6. The order sought to be reviewed was made in 2002. The applicant had opportunity shortly thereafter to challenge that decision on appeal within the twenty-eight days allowed in law. It would appear that was not done. She could still have lodged a review application against it immediately or shortly after the order was made. She did not. Questions arise as to whether fourteen (14) years later a party would be justified to challenge the order by way of review.
7. The provisions on review in the Civil Procedure Act, Cap 21, Laws of Kenya, and the Rules made thereunder, do not give time stipulations within which review applications ought to be brought. However, such applications are subject to the reasonableness rule, that such applications ought to be brought within reasonable time from the date of the decision. The logic being that after the decision is pronounced parties take steps in compliance with it, which cannot thereafter be reversed without badly hurting the position of the parties affected. A party moving for review after fourteen years of the making of the decision in question cannot be said to have moved within reasonable time.
8. I have mentioned above that upon the making of the order in 2002, the applicant took no steps to challenge that orders. She waited until 2004, when the court revoked the grant on record, on application

of someone other than the applicant herein, to lodge a similar objection in 2006. It is that objection that I dismissed on 18<sup>th</sup> December 2015 on grounds of *res judicata*.

9. The applicant appears to be riding on the promulgation of a new Constitution in 2010 to urge that the said decision be revisited on discrimination grounds. Well, in 2002 Kenya still had a Constitution, which outlawed discrimination based on gender. She could, then, have moved the court on similar grounds. In my opinion nothing has dramatically changed between then and now to make the said decision amenable to review.

10. The inevitable conclusion that I will draw on the application before me is that the same has no merits. I hereby dismiss the same. The respondent shall have costs thereof. The estate comprises of only one asset, Kiambaa/Kihara/680, the cause herein shall accordingly be transferred to the High Court at Kiambu for disposal of any pending business.

**DATED, SIGNED and DELIVERED at NAIROBI this 2<sup>ND</sup> DAY OF JUNE, 2017.**

**W. MUSYOKA**

**JUDGE**