



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 257 OF 1999

***(IN THE MATTER OF THE ESTATE OF MACHARIA S/O KARUNDO ALIAS MACHARIA
KARUNDO (DECEASED)***

JOHN MWANGI MACHARIA.....PETITIONER/APPLICANT

VERSUS

PETERSON NGINGA MACHARIA.....1ST PROTESTOR

ALEX GITHINJI MACHARIA.....2ND PROTESTOR

AND

PETER NGINGA NYAMBURA.....1ST INTERESTED PARTY

SHADRACK M. NYAMBURA.....2ND INTERESTED PARTY

PATRICK K. NYAMBURA.....3RD INTERESTED PARTY

JUDY MUTHONI NYAMBURA.....4TH INTERESTED PARTY

PHILIP NGINGA MACHARIA.....5TH INTERESTED PARTY

RULING

By a Notice of Motion dated 21st November, 2014 the applicant sought for review of the judgment delivered in this court on 11th December, 2007 on the grounds that the estate was distributed to the “wrong people”; that the estate should have been distributed amongst the deceased’s wives and no share should have been given to one Nyambura Nginga; and, since the learned judge had found the evidence on the deceased’s survivors to be inconsistent, then she should not have relied on the same evidence as a basis of distribution of the estate.

The application was supported by the applicant’s own affidavit sworn on 21st November, 2014.

The motion was opposed and the first interested party filed a replying affidavit to that effect on his own behalf and on behalf of the other interested parties. According to him, although the judgment in which the distribution of the deceased’s estate was determined was delivered way back in 2007, the applicant and his co-administrator never took any step to comply with the judgment and complete the administration of the estate until this cause was sought to be mentioned in court for further orders.

The interested parties have also sworn that there is no discovery of any new evidence that the applicant has made and which would have influenced the decision of the court had it been brought to its attention before it delivered its judgment. It is their case that the issues raised to support the application are more of grounds of appeal than for review. In any event, the applicant has not given any reasons why he it took him more than seven years before filing the application for review.

According to **Order 45** of the **Civil Procedure Rules** under which I suppose the application was made, one can only apply for review if there is evidence of discovery of a new and important matter or evidence, which after the exercise of due diligence, was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed or the order made. He can also apply for review on account of some mistake or error apparent on the face of record or for any other sufficient reason.

Having considered the applicant's application keenly, I cannot find any of these grounds; if the estate was distributed to people who were not legally entitled to any share of that estate; or that any of the deceased's survivors and beneficiaries to his estate were disinherited; or that the court relied on contradictory evidence in distributing the estate, then the appropriate action the applicant should have taken is to appeal against the judgment of this court rather than ask for its review.

In any event, assuming that any of the grounds of making the application for review existed, no explanation whatsoever has been given for the delay of seven years before the application was made; as noted the judgment sought to be reviewed was delivered in 2007 but it was not until 2014 that the application for review was made. Where an application for review has to be made, it must always be made without unreasonable delay; in my view a delay of seven years is grossly unreasonable particularly so when no explanation of any sort for the delay has been offered.

I would agree with the interested parties that the applicant's application is not only groundless but it also lacks any merit. I hereby dismiss it with costs.

Signed, dated and delivered in open court this 15th day of July, 2016

Ngaah Jairus

JUDGE