

REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 843 of 2007

MICHAEL ONZERE ANGALIKA PETITIONER

AND

SARAH ATEMU INGUTU OBJECTOR/APPLICANT

R U L I N G

The application by way of Notice of Motion dated 23.1.12 seeks orders that this court do review, quash or set aside the orders herein made on 4th May, 2011.

The application is supported by the affidavit in support sworn on 23.1.12 by the applicant, **SARAH A. INGUTU**. According to the said affidavit the court made orders for the applicant to pay the respondent Kshs.25,000/= . The applicant has averred that she is unable to raise the said sum of Kshs.25,000/= as she relies on “casual jobs”.

In opposition to the application, the respondent, **MICHAEL ONZERE ANGALUKA** swore a replying affidavit on 18.6.12. The respondent saw no merits in the application. The respondent termed the application as incompetent and stated that the applicant is not a widow as stated in the applicant’s affidavit. The applicant however stated in court that the term “widow” is an error on her part due to her being illiterate and the correct position is that her husband is a person of unsound mind.

The applicant has given her financial status as the reason why she cannot be able to pay the Kshs.25,000/= costs awarded by the court.

However, “it is settled law that a consent judgment can only be set aside on the same grounds as would justify the setting aside of a contract, for example fraud, mistake or misrepresentation” (see **FLORA N. WASIKE VS DESTIMO WAMBOKA** [1982 – 88] I KAR 625.

The applicant has therefore not shown sufficient reasons why the court should interfere with consent orders recorded on 4.5.2011.

The application is dismissed with costs.

Delivered, dated and signed at Kakamega this 4th day of October, 2012

B. THURANIRA JADEN

J U D G E