

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

SUCCESSION CAUSE 893 OF 2014

SAMUEL KARIUKI GITAU..... APPLICANT

VERSUS

**MICHAEL MWANI GITAU.....
RESPONDENT**

RULING

1. The applicant, *Samuel Kariuki Gitau*, approached this court by way of a summons dated 28th March 2025 seeking the following orders:

- a) That the judgement of this court dated 2nd March, 2021 be reviewed, to the extent that Land parcel No. LOC. 7/Gakoigo/190 be registered in the names of *Samuel Kariuki Gitau* as sole proprietor;
- b) That costs of the application be borne by the respondent.

- 2.** The application is anchored on the grounds stated on its face and on the depositions made in the supporting affidavit sworn by the applicant on 28th March 2025.
- 3.** Briefly, the applicant averred that he was the step-son of the deceased and that his father, *Venasio Gitau*, was a brother to the deceased; that the deceased was not survived by a wife or biological children; that he was the one who took care of the deceased until his demise; that before his death, the deceased bequeathed to him land parcel No. LOC.7/Gakoigo/190 on which he had built, cultivated, and made substantial developments; that the respondent and protestor did not occupy the aforesaid land even during the lifetime of the deceased.
- 4.** In addition, the applicant complained that this court failed to notify him of the date of delivery of the judgment dated 2nd March 2021 and for this reason, he was unable to appeal in time against the impugned judgement hence the instant application. He averred that the court's mistake should not

be visited upon him as doing so would amount to a travesty of justice.

- 5.** He urged this court to invoke its inherent power under *Rule 73 of the Probate and Administration Rules* and review the aforesaid judgment and order that land parcel No. LOC.7/Gakoigo/190 be registered in his name as the sole proprietor.
- 6.** The application was opposed through a replying affidavit sworn on 5th June 2025 by *Michael Mwangi Gitau*, the respondent. In the affidavit, *Mr. Mwangi* claimed that the applicant was misleading the court as the court delivered its judgment on 2nd March 2021 with full knowledge of all the parties including the applicant. He further stated that the deceased's estate was distributed equally among all the beneficiaries who included the applicant and a certificate of confirmation of grant was duly issued.
- 7.** He stated that land parcel No. LOC.7/Gakoigo/190 (the subject land) was family property and that together with his family, he had been in occupation of the said land to date

and that several relatives of the family had been buried there. Further, the respondent contended that the applicant was not being truthful as he was residing in Maragua town throughout the pendency of this cause and not on the subject land.

- 8.** It was the respondent's case that the instant application which was filed late in the day was an afterthought and an attempt by the applicant to deny the deceased's beneficiaries their rightful inheritance; that the application was baseless and mischievous as the applicant had failed to advance any legal grounds for review. He urged this court to dismiss the application with costs for lack of merit.
- 9.** When the application came up for hearing on 11th June 2025, both parties informed the court that they would not be making oral or written submissions and that they wished to rely entirely on the affidavits they had filed in support and in opposition to the application.
- 10.** Having carefully considered the application, the affidavits filed by the parties as well as the court record, I find that the

main issue arising for my determination is whether the applicant had demonstrated that he was deserving of the orders sought.

- 11.** The courts power to review its own orders in civil proceedings is donated by *Section 80* of the *Civil Procedure Act* which is operationalized by *Order 45* of the *Civil Procedure Rules* (the Rules). *Order 45* of the *Civil Procedure Rules* has been incorporated into succession practice by *Rule 63 (1)* of the *Probate and Administration Rules* which stipulates as follows:

“ (1) Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Order 5, rule 2 to 34 and Orders 11, 16, 19, 26, 40, 45 and 50 (Cap. 21, Sub. Leg.), together with the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.), shall apply so far as relevant to proceedings under these Rules.”

12. As was correctly stated by the court in **John Mundia Njoroge & 9 others V Cecilia Muthoni Njoroge & John Ngari Njoroge (2016) KEHC 6254 (KLR)**, an application for review in succession proceedings can be filed by a party to the proceedings, a beneficiary to the estate or any interested party. However, the application must meet the substantive requirements of an application for review set out in *Order 45* of the Rules.
13. *Order 45 Rule 1* of the Rules is in the following terms;

“Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or

the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

14. A careful reading of the above provision reveals that to succeed in an application for review, an applicant must demonstrate that either of the following circumstances existed in his or her case.

i. That there has been discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced at the time the decree or order was made; or

ii. That there was a mistake or error apparent on the face of the record; or

iii. That there is any other sufficient reason to warrant a

review.

15. In this case, from the material placed before the court, it is clear that the applicant has not claimed let alone demonstrated that there was any error apparent on the face of the record or that he had come across or discovered any new and important evidence sufficient to warrant a review of this court's judgment delivered on 2nd March 2021.
16. The question that must now be answered is whether the applicant has demonstrated that there is any other sufficient reason that would justify a review of the impugned judgment.
17. What constitutes any other sufficient reason was discussed by the Court of Appeal in **Board of Trustees National Social Security Fund V Micheal Mwalo [2015] KECA 782 (KLR)** in which the court expressed itself as follows;

“ It is now settled law that “any other sufficient reason” in Order 45 Rule 1 of the Civil Procedure Rules need not be analogous with the other

grounds in the order because clearly Section 80 of the Civil Procedure Act confers an unfettered right to apply for review and so the words “for any other sufficient reason” need not be analogous with the other grounds specified in the Order.”

- 18.** The applicant claimed that he was exclusively entitled to the subject land as the deceased had bequeathed it to him before his demise and that the respondent has never occupied or cultivated the said parcel of land. However, he did not adduce any evidence during the hearing to substantiate that claim.

- 19.** Additionally, the applicant alleged that the court did not inform him of the date of delivery of the judgement and the mistake of the court should not be visited on him. The court record however proves otherwise. The record confirms that after conclusion of the hearing on 27th January 2021, the learned judge informed the parties present in court who included the applicant, that the judgement will be delivered on 2nd of March 2021.

- 20.** The record further shows that when the judgement was delivered on the scheduled date, learned counsel for the applicant *Mr. Njoroge* was present in court. *Mr. Njoroge* being the applicant's counsel was his representative and consequently, the applicant cannot validly claim that he was unaware of the judgement date.
- 21.** From the foregoing, it is evident that the applicant has failed to demonstrate existence of any sufficient reason that would justify review of the court's judgement dated 2nd March 2021.
- 22.** For all the above reasons, I have come to the conclusion that the instant application lacks merit and it is hereby dismissed with costs to the respondent.

It is so ordered.

DATED, SIGNED and DELIVERED at **MURANGA** this 17th day of December 2025.

HON. C. W. GITHUA
JUDGE

In the presence of :

Mr. Njoroge for the Applicant
The respondent
Ms. Susan Waiganjo, Court Assistant