



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 97'A' OF 2014

RUTH WAMBUGI NGURETI.....PLAINTIFF

VERSUS

LUCAS KAMAU NGURETI.....DEFENDANT

AND

MISHEK GATANA NGURETI.....1ST INTERESTED PARTY

EDWARD GITHIMU NGURETI.....2ND INTERESTED PARTY

JOHN MWANGI MIHUNI.....3RD INTERESTED PARTY

STEPHEN MAINA GIKONYO.....4TH INTERESTED PARTY

RULING

BACKGROUND

The application for determination is the Notice of Motion dated 4th March 2019 brought under **Order 45 Rules 1 and 2 Civil Procedure Rules**. It is seeking to vary, review and/or set aside the orders of 25th January 2018. This Honourable Court had given the following orders:

“(1) That the case be mentioned on 12th April 2018.

(2) That if no action is taken by then to substitute the deceased defendant, the suit will stand dismissed”.

The reason advanced by the plaintiff for failing to comply with the said order is that he was unable to substitute as the ruling in a Petition for Letters of Administration No. 28 of 2016 which was delivered on 8th June 2018 dismissed the same. The plaintiff further stated that the plaintiff who is advanced in age (86 years) fell sick and could not be able to contact his counsel on the way forward. He attached copies of proceedings in the said Petition No. 28 of 2016 (Gichugu) and a medical report. In her further affidavit filed in Court on 3rd June 2019, the plaintiff attached a copy of the Ruling by the Gichugu Court dismissing the said Petition No. 28 of 2016.

The defendant filed grounds of opposition and a replying affidavit in opposition to that application. In his replying affidavit, the defendant denies that the plaintiff fell sick at any time during the pendency of this suit as he was and is still in personal knowledge of the whereabouts of the plaintiff who goes for regular check-ups at Medical clinics. The defendant also states that the plaintiff has not shown any just/sufficient cause whatsoever warranting her to be issued with the orders sought since she has been an indolent litigant ever after being given a final chance by the Court.

I have considered the affidavit evidence and the supporting documents. I have equally considered the submissions by counsel for the plaintiff and those of the rival party. The plaintiff in her affidavit in support of this application explained that after the demise of her husband Lucas Kamau Ngureti (deceased) on 26/2/2016, her daughter Lyne Wambui Githua moved Gichugu Law Courts for Petition of Letters of Administration ad Litem on 4/5/2016. When this case came up for Notice to show cause on 25th January 2018, they informed the Court that a Petition for a limited grant was pending before Gichugu Law Courts. The proceedings in the said Succession Cause No. 28/2016 was attached to the supporting affidavit. The ruling in that cause was also attached showing that the ruling of the Court was delivered on 8/6/2018.

Section 45 Rule 1(a) & (b) Civil Procedure Rules provides as follows:

“(a) Any person who considers himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or 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 when the decree was passed or the order made, or on account of some mistake 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 un-reasonable delay”.

From the proceedings in Petition for Letters of Administration Ad Litem No. 28/2016, it is true that the plaintiff moved that Court through her daughter Lyne Wambui for Letters of Administration two months after the demise of her husband. For reasons that cannot be attributed to the plaintiff, the ruling in that Petition was delivered on 8/6/2018. I find those reasons sufficient grounds as contemplated under the provisions of **Order 45 Rule (1) (a) Civil Procedure Rules** where it states:

“45 (a) or for any other sufficient reason, desires to obtain a review of the decree or order”

In the case of **Wangechi Kimata & another Vs Charle Singh C.A. No. 80 of 1985 (unreported)** cited by counsel for the plaintiff, the Court of Appeal stated on sufficient reasons as follows:

“..... any other sufficient reason need not be analogous with the other grounds set out in the rule because such restriction would be a clog on the unfettered rights given to the Court by Section 80 of the Civil Procedure Act and that the other grounds set out in the rule did not in themselves form a genus or class of things which the third parties general head could be said to be analogous”.

Again in **Wananchi Group Ltd Vs Communications Commission of Kenya & others (2013) e K.L.R, Mumbi Ngugi J.** while citing with approval the case of **Anders Bruel T/A Queen Cross Aviation Vs Kenya Civil Aviation Authority & another (2013) e K.L.R**, held as follows:

“It is indeed true that the Court held in the Anders Bruel case that even though there are no provisions directly providing for review of decisions in Constitutional Petitions on the basis of the provisions of Article 22 and 159 (2) (d), the Court is duly bound, should sufficient reasons be established to review its decision”.

From the decision by the Courts on the issue before Court, the established principles are that a Court can review its order (s) where it is satisfied that compelling reasons have been presented by the Applicant.

In my view, the reasons that have been given by the Plaintiff/Applicant are compelling reasons to review the orders of this Court issued on 25/01/2018. I therefore allow the application dated 4th March 2014 as prayed. The costs of this application shall be borne by the Plaintiff in any event.

READ and DELIVERED in open Court at Kerugoya this 19th day of July, 2019.

E.C. CHERONO

ELC JUDGE

19TH JULY, 2019

In the presence of:

1. Mr. C.S. Macharia
2. Mr. Githaiga holding brief for Ms Wangechi Munene
3. Mbogo – Court clerk