



**In re Estate of John Wambugu Wahome alias John Kahuho Wahome (Deceased)
(Succession Cause 618'A' of 2011) [2024] KEHC 7818 (KLR) (27 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7818 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 618'A' OF 2011
DKN MAGARE, J
JUNE 27, 2024**

BETWEEN

FLORENCE NYAGUTHII WAMBUGU APPLICANT

AND

SOLOMON GITHINJI KAHUHO RESPONDENT

RULING

1. The Applicant sought for review of the order given on 23/7/2023. The Grant hitherto issued was revoked. That was the only decision the court made. The Review thereof amounts to Appeal from the High Court to the High Court.
2. Parties must learn two things:-
 - a. To appeal decisions.
 - b. To disclose all their siblings.
3. Review is not an Appeal. Section 80 of the *Civil Procedure Act* states that:

“ Any person who considers himself aggrieved—

 - (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit”.



4. Section 63 (e) of the *Civil Procedure Act* states that:

“In order to prevent the ends of justice from being defeated, the court may, if it is so prescribed make such other interlocutory orders as may appear to the court to be just and convenient

5. Order 45 of the *Civil Procedure Rules* provides for Review and it states as follows:

“(1) 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.
- (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review”

6. I associate myself with the reasoning of Kuloba J (as he then was) in *Lakesteel Supplies vs. Dr. Badia and Anor Kisumu* HCCC No. 191 of 1994 where he opined that:

“The exercise of review entails a judicial re-examination, that is to say, a reconsideration, and a second view or examination, and a consideration for purposes of correction of a decree or order on a former occasion. And one procures such examination and correction, alteration or reversal of a former position for any of the reasons set out above. The court of review has only a limited jurisdiction circumscribed by the definitive limits fixed by the language used in Order 44 rule 1, of the *Civil Procedure Rules*. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. It can only lie if one of the grounds is shown, one cannot elaborately go into evidence again and then reverse the decree or order as that would be acting without jurisdiction, and to be sitting in appeal. The object is not to enable a judge to rewrite a second judgement or ruling because the first one is wrong...On an application for review, the court is to see whether any evident error or omission needs correction or is otherwise a requisite for ends of justice. The power, which inheres in every court of plenary jurisdiction, is exercised to prevent miscarriage of justice or to correct grave and palpable errors. It is a discretionary power. In the present application it has not been said or even suggested that after the passing of the order sought to be reviewed, there is a discovery of new and important matter of 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 ruling was made.”

7. The reasons given are not reasons to warrant review. Once it was shown that the Applicant was a beneficiary, then notwithstanding any hardship, the court cannot enforce an illegality.



8. In *Macfoy vs. United Africa Co. Ltd* [1961] 3 All E.R. 1169, Lord Denning delivering the opinion of the Privy Council at page 1172 (1) said;

“If an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the Court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the Court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

9. The order given by the court remains in situ. In order to give effect to the order given, I give the following directions:-

- a. The Application dated 31/3/2023 is dismissed with costs of Kshs. 10,000/= to the Respondent payable within 14 days.
 - b. The Grant stands revoked as ordered by the court.
10. The effect of the revocation is that all titles issued by dint of the revoked grant are hereby set aside including all subdivisions. The Land Registrar, Nyeri county to ensure that Land Parcel No. Thegenge/Ihithe/403 reverts back to the estate of the late John Wambugu Kahuho (deceased) pending administration and remains registered in the name of the estate of the late John Wambugu Kahuho (deceased).
11. The Administrator to file an application for confirmation within 14 days from the date hereof. The other beneficiaries to file schedules, if dissatisfied with the schedule.
12. There shall be a conservatory order on the estate pending confirmation.
13. The matter shall be fixed for confirmation on 18/9/2024. All beneficiaries are required to attend.

Determination

14. The court makes the following orders: -
- a. The Application dated 31/3/2023 is dismissed with costs of Kshs. 10,000/= to the Respondent payable within 14 days.
 - b. The Grant stands revoked as ordered by the court.
 - c. The Land Registrar, Nyeri county to ensure that Land Parcel No. Thegenge/Ihithe/403 reverts back to the estate of the late John Wambugu Kahuho (deceased) pending administration and remains registered in the name of the estate of the late John Wambugu Kahuho (deceased).
 - d. The Administrator to file an application for confirmation within 14 days from the date hereof.
 - e. The other beneficiaries to file schedules, if dissatisfied with the schedule.
 - f. There shall be a conservatory order on the estate pending confirmation.
 - g. The matter shall be fixed for confirmation on 18/9/2024.
 - h. All beneficiaries to attend.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 27TH DAY OF JUNE, 2024.

KIZITO MAGARE



JUDGE

In the presence of:

Florence Nyaguthii

Simon Githinji (Applicant) – present.

Court Assistant - Jedidah

Page 3 of 3 D. M. KIZITO, J.

