



**In re Estate of M’inyingi Kireru (Deceased) (Succession Cause
35 of 2013) [2022] KEHC 16714 (KLR) (22 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16714 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 35 OF 2013
EM MURIITHI, J
DECEMBER 22, 2022
IN THE MATTER OF THE ESTATE OF M’INYINGI KIRERU (DECEASED)**

BETWEEN

MWORUCHIAKA M’INYINGI PETITIONER

AND

MWITHUMBU M’INYINGI OBJECTOR

RULING

1. By chamber summons dated November 24, 2021 pursuant to section 47 of the *Law of Succession Act*, rules 49 and 73 of the *Probate and Administration Rules* and article 159 (2) (d) of the *Constitution*, the objector seeks:
 - “ 1. That this honorable court be pleased to review its ruling dated November 29, 2018 which ruling disinherited the applicant from her husband’s estate.
 2. That the court do make an order that Ithima /Atuambui/2587 be shared among the two widows of the deceased.”
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Mwithumbu M’Inyingi, the objector herein, sworn on even date. She avers that she is the first wife of the deceased herein while the petitioner is the second wife. The deceased shared all his estate amongst his sons during his life time leaving Ithima /Atuambui/2587 to be shared between his 2 wives. The deceased then transferred Ithima /Antuambia/2535 to his son Kabwi M’Inyingi as per the certificate of search. She avers that she was disinherited when the court decreed that she settles in Ithima /Antuambia/2535. In her view, there is an error apparent on the face of the record which should be reviewed.



3. The petitioner opposed the application *vide* her replying affidavit sworn on March 7, 2022. She avers that the application is incompetent, and an abuse of the court process meant to mislead the court, as there is no error apparent on the face of the record. She avers that all the parties have complied with the impugned ruling and settled on their respective shares as distributed by the court, hence touching one property would affect the whole distribution, cause confusion and the court will be sitting on an appeal of its own judgment. She avers that the objector was well provided for as she got an equal share of Ithima /Antuambia/988 and Ithima /Antuambia/3090, which she occupies and benefits from. She avers that the objector wants to disinherit the other beneficiaries, as she got 1 acre while the rest got 0.24 acres. She urges the court to dismiss the application, order this file as closed and bring the litigation herein to an end.
4. In her submissions filed on June 2, 2022, the objector urges that since the court complained of insufficiency of material evidence to assist it in deciding the case fairly, the court should review the impugned ruling and demand such evidence to be availed.
5. The petitioner urges that the application is meritless as the grounds relied on do not constitute an error apparent on the face of the record or any other threshold necessitating review. She urges the court not to aid the objector who has been indolent for 3 years since 2018, when the impugned ruling was delivered, as she is driven by greed. According to her, the objector ought to have appealed against the impugned ruling without unreasonable delay, before the grant was executed. She urges that the application is frivolous, meritless and an abuse of the court process, which ought to be dismissed with costs, and relies on [*Republic v Advocates Disciplinary Tribunal ex parte Apollo Mboya \(2019\) eKLR*](#).

Analysis and determination

6. In order to succeed in her application for review, the objector is required to establish to the satisfaction of the court any one of the following three main grounds as stipulated under order 45 of the [*Civil Procedure Rules*](#):
 - i. That there is discovery of new and important evidence which was not available to the applicant when the judgment or order was passed despite having exercised due diligence; or
 - ii. That there was a mistake or error apparent on the face of the record; or
 - iii. That sufficient reasons exist to warrant the review sought. In addition to proving the existence of the above grounds, the applicant must also demonstrate that the application was filed without unreasonable delay.”
7. The objector contends that the impugned ruling disinherited her from her husband’s estate. In response, the petitioner contends that indeed the objector got the lion’s share of 1 acre as compared to the other beneficiaries who only got 0.24 acres. The objector was given 0.3 Ha of Ithimbu/Antuambia/988 and 0.7 Ha of Ithimbu/Antuambia/3090 bringing the total acreage to 1 Ha. The court did not disinherit the objector by settling her on Ithimba /Antuambia/2535, as the same was not even available for distribution, having been bequeathed by the deceased during his life time to a son of the objector namely Kabwi M’Inyingi. The objector is thus being mean with the truth when she alleges that she was settled by the court on that land.
8. The objector wants Ithimba/Antuambia/2587 measuring 0.8 Ha taken away from the 7 beneficiaries and redistributed to herself and the petitioner, without any justification and/or consent from them. Is



that an error apparent on the face of the record? The answer was highlighted by the Court of Appeal in *Mwibiko Housing Company Ltd v Equity Building Society [2007] eKLR* as follows:

“It is trite law, and we reiterate, that a review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self evident and should not require an elaborate argument to be established. It will not be a sufficient ground of review that another Judge could have taken a different view of the matter. Nor can it be a ground of review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review. See *Nairobi City Council v Thabiti Enterprises Ltd* [1995-98] 2EA 251 (CAK).”

9. This court refuses to grant the wishes of the objector at the expense of not just one but 7 beneficiaries, who have since settled and developed their respective portions of Ithimbu/Antuambia/2587.
10. The prayers sought by the objector essentially seek to disrupt the entire mode of distribution, which falls outside the purview of review as provided under order 45 of the *Civil Procedure Rules*.
11. The objector fully participated in the proceedings culminating into the impugned ruling and it would be expected that she would have assisted the court then to make a more just decision by adducing the alleged additional evidence. Surprisingly, she did not call any witnesses to challenge the evidence led by the petitioner.
12. The court, therefore, finds that no proper case for review has been made to warrant the exercise of the court’s limited powers of review.

ORDERS

13. Accordingly, for the reasons set out above, the application dated November 24, 2021 is dismissed.
 14. There shall be no order as to costs.
- Order accordingly.

DATED AND DELIVERED ON THIS 22ND DAY OF DECEMBER, 2022.

EDWARD M MURIITHI

JUDGE

Appearances:

Mr Sandi with Ms Mbumbuya, Advocates for the objector.

Ms Karimi, Advocate for the petitioner.

