



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO 279 OF 2013

(CORAM: CHERERE-J)

IN THE MATTER OF THE ESTATE OF THE MUKINDIA MWIREBUA (DECEASED)

BETWEEN

JOHN NTEERE MWARANIA.....PETITIONER

AND

SUSAN MARETE.....OBJECTOR

TABITHA KATHURE MUKINDIA.....RESPONDENT

AND

IN AN APPLICATION BY KARURU MUKINDIA

RULING

1. By a ruling dated 24th September 2020., the deceased's estate was distributed as follows:

a) Ntima/Ntakira/ 483

Francis Kamathi 1 acre

John Nteere 1 acre

Simon Muriithi 1 acre

Isabella Gacheri – 0.32 acres

Karuru Mukindia 0.50 acres

Purity Makandi 1 acre

Tabitha Kathure Mukindia 0.50 acres

b) Meru Central Farmers' cooperative union

Francis Kamathi

John Nteere

Simon Muriithi

Isabella Gacheri

Karuru Mukindia

Purity Makandi

Tabitha Kathure Mukindia to share equally

c) **Money In Post Bank** to John Nteere in whole

d) **MiruaMeru Farm Cooperative Society to be shared equally**

Francis Kamathi

John Nteere

Simon Muriithi

Isabella Gacheri

Karuru Mukindia

Purity Makandi

Tabitha Kathure Mukindia

e) **MIRIGA MIERU LANDLESS COOP SHARES**

To be shared equally by

Francis Kamathi

John Nteere

Simon Muriithi

Isabella Gacheri

Karuru Mukindia

Purity Makandi

Tabitha Kathure Mukindia

d) **Household goods and Domestic Animals.**

Francis Kamathi

John Nteere

Simon Muriithi

Isabella Gacheri

Karuru Mukindia

Purity Makandi

2.By chamber summons dated 22nd October, 2020 filed on 27th October, 2020, **KARURU MUKINDIA (Applicant)** seeks a review of the court order dated 24th September, 2020 on distribution of deceased's estate.

3.The application is supported by the Applicant's supporting affidavit sworn on 22nd October, 2020 mainly on the ground that the court in redistributing deceased's estate deducted 0.50 acres of 1 acre that had initially been confirmed for the Applicant in **LR. Ntima/Ntakira/ 483** and distributed it to Tabitha Kathure Mukindia (**Respondent**) thereby denying the Applicant an equal share with the other beneficiaries.

4.The summons is opposed on the basis of a replying affidavit sworn by **TABITHA KATHURE MUKINDIA** on 29th

January, 2021 contends that the application is devoid of merit and that her mother is seeking to deny her a share of his father's estate.

Analysis and Determination

5. I have considered the chamber summons in the light of the affidavits on record and submissions filed on behalf of the parties and the issue for determination has been made out for an order of review.

6. Review of orders is governed by Section 80 of the Civil Procedure Act which provides inter alia: -

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.

7. Order 45 rule 1 of the Civil Procedure Rules on the other hand provides that: -

(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.

8. The Court of Appeal in **Anthony Gachara Ayub v Francis Mahinda Thinwa [2014] eKLR** restated the main grounds for review which are discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or for any other sufficient reason and most importantly, the application has to be made without unreasonable delay.

9. The ruling from which the Applicant seeks to review was delivered on 24th September 2020. The application for review was filed timeously on 27th October, 2020.

10. Section 80 of the Civil Procedure Act and order 45 rule 1 of the Civil Procedure rules gives the court unfettered discretion to make such order as it thinks fit on sufficient reason being given for review of its decision. However, as it has been constantly stated, this discretion should be exercised judiciously and not capriciously.

11. In **National Bank of Kenya Limited v Ndungu Njau (1997) Eklr** the Court of Appeal held 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 for review that another Judge could have taken a different view of the matter”.

12. By seeking an order of review, I understand the Applicant to ask this court to take a different view from the previous decision by **this court concerning the distribution of deceased's estate comprised in LR. Ntima/Ntakira/ 483.**

13. With respect, this court's declines the invitation to review the order dated 24th September, 2020 on the grounds that the Applicant has not demonstrated the discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or for any other sufficient reason.

14. In the end, the chamber summons dated 22nd October, 2020 filed on 27th October, 2020 is found to have no merit and is dismissed with costs to the Respondent.

DATED AT MERU THIS 22ND DAY OF APRIL 2021

T. W. CHERERE

JUDGE

Court Assistant - Morris Kinoti

For Applicant - Mr. Gachuki for M/s. Mithega & Kariuki Advocates

For Respondent - N/A

T.W.Cherere