



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**MISC. SUCCESSION CAUSE NO. 26 OF 2016**

**IN THE MATTER OF THE ESTATE OF MOHAMED KAHINDI CHULA (DECEASED)**

**BETWEEN**

**HARRISON MKUTANO KAHINDI.....ADMINISTRATOR/APPLICANT**

**VERSUS**

**SIDI THOYA .....1<sup>ST</sup> RESPONDENT**

**RAMA MOHAMED.....2<sup>ND</sup> RESPONDENT**

**SANTA KAVIHA.....3<sup>RD</sup> RESPONDENT**

**HAMISI MOHAMED.....4<sup>TH</sup> RESPONDENT**

**MALI MOHAMED.....5<sup>TH</sup> RESPONDENT**

**JUMAA MOHAMED.....6<sup>TH</sup> RESPONDENT**

**AND**

**KOI HARRISON MKUTANO.....INTERESTED PARTY**

**Coram: Hon. Justice R. Nyakundi**

**Harrison Mkutano Kahindi in person**

**Michira Messah advocates for the Respondents**

**J. K. Mwarandu advocates for the Interested Party**

**RULING**

This is a Ruling on review of the earlier order of this Court on confirmation of Grant of Letters of Administration to the estate of the deceased **Mohamed Kahindi Chula**. According to the applicant as stated in the motion filed in Court on 6.4.2021, it has come to his attention that **Plot No. 183/Malindi** though included as free property to the estate was an error and mistake as it belonged to some other person. That the real particulars of the immovable property comprised of **Plot No. Jiore/Kakoneni/59**. In support of the motion was the affidavit sworn by **Harrison Mkutano Kahindi**. In that affidavit the applicant depones to the effect of the discovery of new evidence setting out the fact of **Plot No. 183/Malindi** having been sold to the **Late Kaviha Chula**.

That the distribution of the aforesaid asset to **Sidi Thoya** was a mistake and an error on the face of the record that the exact asset which ought to form part of the deceased estate is that particularized as **Plot No. Jiore/Kakoneni/59**.

**Determination**

The question to be considered is whether the applicant has met the criteria set out under Order 45 Rule 1 of the Civil Procedure Rules as read conjunctively with Section 80 of the Civil Procedure Act, for this Court to exercise review jurisdiction. In adherence to these provisions, the Court exercises such jurisdiction if the specifics in the case establishes an error or mistake apparent on the face of the record, discovery of new and important matter or evidence which after the exercise of due diligence was not within the applicant knowledge or could not be produced by him at the time when the decree was passed or order or for any other sufficient reason.

See also the principles on **Nyamogo & Nyamogo Advocates v Moses K. Kogo CA No. 322 of 2000 {2000} LLR.**

In the instant case, the applicant has shown that there has been a discovery of new and important evidence with regard to **Parcel No. Jiore/Kakoneni/59** which was not within his knowledge at the time of the earlier order on distribution of the intestate estate. In the same vein, the applicant depones that **Parcel No. 183/Malindi** though included as part of the estate had indeed passed title to Kaviha Chula and therefore not part of free property to the deceased **Mohamed Kahindi**.

In view of such glaring circumstances, the proceedings on confirmation of grant of Letters of Administration contained an error and mistake on the face of the record calling for review to correct the irregularity. The effect of it is to grant the motion filed in Court by the applicant dated 6.4.2021 to grant of prayers No. 1 and 2 of the application with no orders as to costs.

**DATED, SIGNED AND DISPATCHED via email AT MALINDI ON 27<sup>TH</sup> DAY OF AUGUST 2021**

.....

**R. NYAKUNDI**

**JUDGE**

([mwaranduwakili@gmail.com](mailto:mwaranduwakili@gmail.com) , [shujaawara@yahoo.com](mailto:shujaawara@yahoo.com), [philipmichira@gmail.com](mailto:philipmichira@gmail.com) )