



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 813 OF 2015

IN THE MATTER OF THE ESTATE OF M'MBURUGU M'RIMBERIA alias MBURUGU RIMBERIA(DECEASED)

TERESIA KANUGU MUNYUAAPPLICANT/INTERESTED PARTY

VERSUS

LYDIA KARAMBURI MUGAMBI1ST RESPONDENT

THIURU MARK MUGAMBI 2ND RESPONDENT

RULING

1. The applicant has filed summons for rectification of grant and review of the court's judgment dated 4/4/2019. The application invokes the provisions of Rules 43, 63 & 73 of the Probate and Administration Rules and Order 45 of the Civil Procedure Rules. The import of the said rectification and/or review is redistribution of the share given to Stanley Mugambi (now deceased) to Lydia Karamburi Mugambi to hold in trust of his estate.

2. She also seeks an order for the cancellation of Land Titles No. **NKUENE/MITUNGUU/3206, NKUENE/MITUNGUU/3208, NKUENE/MITUNGUU/3209, NKUENE/MITUNGUU/3210, NKUENE/MITUNGUU/3211, NKUENE/MITUNGUU/3248 and NKUENE/MITUNGUU/3249, NKUENE/MITUNGUU/3208** which are all sub-divisions emanating from Land Parcel No. **NKUENE/MITUNGUU/53**.

3. The application is supported by the affidavit of the applicant and grounds set out in the Summons. The essence of the rectification is to redistribute the share of Stanley Mugambi (now deceased) to his surviving wife Lydia Karamburi Mugambi. In view of the resultant subdivisions of L.R No. **NKUENE/MITUNGUU/53**, which was supposed to be shared equally between the applicant and Stanley Mugambi (now deceased), it is imperative that the orders sought are granted.

4. The respondents opposed the application through grounds of opposition dated 18/4/2019. They contended that no search certificates had been annexed to support the allegation of sub-division of L.R NO. **NKUENE/MITUNGUU/53**. They further took issue with the non-inclusion of the registered owners of the alleged resultant parcels as interested parties to safeguard and/or state their interests.

5. The applicant filed supplementary and further supplementary affidavits dated 19/11/2019 and 11/03/2020 respectively, attaching the official searches of the resultant parcels of **NKUENE/MITUNGUU/53**.

6. The application proceeded for hearing by way of written submissions, which were only filed by the applicant on 12/3/2020. In her submissions, the applicant reiterated her position that she had made a case to warrant review and cited **Elias Noel v Ephram Dembete Kirogili (2018) eKLR** in support thereof.

Analysis and determination

7. The remedy of review is coded under Order 45 of the Civil Procedure Rules allows '*any person considering 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 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. In order for an application for review to succeed, the applicant must satisfy the court of the existence of new and important matter or

evidence which, after the exercise of due diligence, was not within her knowledge or could not be produced by her at the time when the decree was passed or the order made or that there is an error or mistake apparent on the face of the record or some other sufficient reason. That provision was echoed by the court in James M. Kingaru & 17 others v J. M. Kangari & Muhu Holdings Ltd & 2 Others (2005) eKLR as follows:

“Applications on this ground (review) must be treated with caution. The applicant must show that he could not have produced the evidence in spite of due diligence; that he had no knowledge of the existence of the evidence or that he had been deprived of the evidence at the time of trial.”

9. When applied to the law of succession Act, the court in Re Estate of Charles Kibe Karanja (Deceased) [2015] eKLR, observed;

“The remedy of review of court orders is not directly provided for in the Law of Succession Act and the Probate and Administration Rules, but it is imported into probate practice by Rule 63 of Probate and Administration Rules, which has adopted a number of procedures from the Civil Procedure rules. Among the imported procedures is the device of review under the Civil Procedure Rules. In the relevant rules on review under the Civil Procedure Rules, an order of the court can be revised on the grounds of an error on the face or the record or discovery of new and important evidence that was not available at the time of the making of the order sought to be reviewed or for any other sufficient reason. Where known assets are omitted from the schedule of the property to be distributed or the name of a known beneficiary or heir is inadvertently left out of the confirmation application, an application ought to be made for review of the confirmation orders to accommodate the said assets or beneficiaries on the basis that the said assets or heirs were left out by mistake or error. Where assets are discovered after the court has confirmed the grant or heir or survivor of the deceased who had previously been previously unheard of materializes after distribution, the court may review its orders made at the point of confirming the grant on the ground of discovery of new and important evidence that was not available at the time the grant was being confirmed.”

10. While I see no error or mistake apparent on the face of the record nor a new and important matter of evidence which could not have been availed to court with due diligence, I do find that the judgment dated 19th October 2017, which distributed the estate specifically reverted three parcels of land to the estate and a certificate of confirmation of grant was consequently issued on 16/10/2018. That decision and the certificate of confirmation remain valid having not been reversed by another court order but cannot be implemented because parcel **No Nkuene /Mitunguu/53** had by the date of the decision mutated by way of subdivision into Nkuene/Mitunguu/3206 to 3211 on the 20/11/2013 and further mutation was effected over Nkuene/Mitunguu/3207 into 3248 and 3249. In effect what was initially Nkuene /Mitunguu/32 now exists as seven distinct titles and registered in favour of different individuals not beneficiaries to the estate. It is such subdivisions the court decreed unlawful and ordered to be cancelled for the property to revert to the estate to enable the grant and certificate of confirmation capable of implementation. I find that the need to implement the judgment is a sufficient reason to order review.

11. Accordingly, I do find merit in the application, and now direct that the registers for parcels of land Known as Nkuene/Mitunguu/ 3206, 3208,3209,3210,3211,3248 and 3249 be cancelled and the register of Nkuene/Mitunguu/53 be restored so that the property reverts to the deceased as the registered owner. Once that is done, I direct that the decision of the court dated 19th October 2017 be implemented at the earliest opportunity by having the entire estate shared out in terms of the orders confirming the grant issued on 16th October 2018. In that sharing, let the share due to Stanley Mugambi, who predeceased the deceased, be registered in the name of Lydia Karamburi Mugambi.

12. The effect of rectification of the certificate of confirmation of grant to substitute the name Stanley Mugambi with that of Lydia Karamburi Mugambi.

13. This matter be mentioned on 23/02/2022 for the administrators to report on the progress made.

Dated, signed and delivered at Meru virtually via MS teams this 30th day of September, 2021.

Patrick J.O Otieno

Judge

In presence of

Mrs. Otieno for petitioner/applicant

No appearance for Mwanzia for the respondent

Patrick J.O Otieno

Judge