



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 175 OF 2008**

**IN THE MATTER OF THE ESTATE OF ROSALIA NKINDA M'TURUCIO (DECEASED)**

**JOSEPHINE MUCECE.....PETITIONER**

**VERSUS**

**JUDITH KAREGI MWENDA.....APPLICANT**

**RULING**

1. Application dated 5.7.2019 comes up for determination. The applicant Judith Karegi Mwenda sought that ruling dated 14<sup>th</sup> November 2018 in relation to distribution of the estate of Rosalia Nkinda M'turuchiu be reviewed and that orders made on 3<sup>rd</sup> May 2017 be reinstated. It was also prayed that share due to Morris Mwongera M'Twaruchiu be specified and same be transmitted to his children.
2. It was also sought that subdivisions done in regard to LR Kiirua/Nkando/540 pursuant to the orders of 14<sup>th</sup> November 2018 be cancelled and same to revert to the original parcel of land. It was prayed that survey and subdivision be done by District surveyor.
3. The application was based on the ground that the petitioner by an application dated 28<sup>th</sup> August 2018 sought rectification of confirmed grant which application was allowed on 14.11.2018 and changed the distribution that was made by the court on 20.9.2017 and reduced the share of Morris Mwongera without consulting his beneficiaries. It was argued that the petitioner didn't serve the beneficiaries of Morris Mwongera or their advocate with the application dated 28.8.2018 and the hearing notice for 14.11.2018 was also not served. It was argued that the beneficiaries of Morris Mwongera are adults and desire that the share of their father should be transmitted directly to them.
4. It was argued that the beneficiaries of Morris Mwongera were not informed when survey was being done and they were not shown share due to them.
5. The application was also supported by the affidavit of Judith Karegi Mwenda sworn on 5<sup>th</sup> July 2019 saying that it was not true as claimed in application dated 28<sup>th</sup> August 2018 that all beneficiaries had agreed on the redistribution of the estate and that those who appeared in court on 14.11.2018 were not the only beneficiaries. Judith Karegi claimed that the petitioner added share due to Jesca Karimi M'Turuchiu to the confirmed grant.
6. I have perused the record of this court and confirmed that application dated 28.8.2018 was heard and allowed on 14<sup>th</sup> November 2018 by Justice Mrima after interrogating Cecilia Nthiori, Jerica Karimi and Fridah Makena as well as Josephine Mucece the Administrator. There is nothing to show that the applicant herein and her siblings were served and were not in court. The petitioner did not indicate particulars of surveyor who carried out survey and she didn't have a report from the said surveyor to confirm to court the averments of the administrator. It is also not explained why Jerica Karimi was to get 1.85 acres from the initial 0.50 acres.
7. The confirmed grant didn't also include provision of road, of 0.085 acres as it is assumed that the beneficiaries will provide roads of access as a matter of course.
8. Inconsideration that application dated 28.8.2018 was allowed without notice to all beneficiaries as and particularly the applicant and her siblings this court hereby sets the orders granted on 14.11.2018 aside.
9. Each party to bear their own costs.

**HON A. ONG'INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED IN COURT ON 30<sup>th</sup> DAY OF JANUARY 2020.**

**In the presence of :**

C/A: Mwenda

Petitioner:- Mr Muthomi Advocate holding brief for Mburugu for Petitioner

Applicant:- Mrs Ntarangwi Advocate

**HON A. ONG'INJO**

**JUDGE**