



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

SUCCESSION CAUSE NO. 239 OF 1996

IN THE MATTER OF THE ESTATE OF JAPHETH MWIRABUA (DECEASED)

JANET NKATHA KITHINJI.....PETITIONER

VERSUS

RODAH KAGWIRIA KITHINJI.....RESPONDENT

PARTIAL RULING

1. Judgement in this matter was entered on 13th November 2018. The Court did not revoke the grant issued on 27th January 1998 except it ordered a new Certificate of Confirmation of Grant to be issued to record the following Distribution.

(i) One acre in Kiirua/ Nkando/46 to Janet Nkatha Kithinji

(ii) One acre in Ruiri/ Rwarera/825 (this is apart from the 1 Acre that was granted to her as a gift inter-vivos by her late father)

(iii) The whole part of plot No. 682 Meru Town.

2. The Petitioner now seeks this Court to review its judgement and reconsider the distribution of the estate. She avers that there is an error apparent on the face of the record.

3. The Petitioner herein alleges that the deceased herein had no other Plot other than **Plot No. 682 Meru Town** and that it is in this Plot that she has invested her entire pension after retirement. That some of the properties listed by the interested party do not belong to the deceased i.e. **Plot No. 124 Meru Town and Isiolo Plot No. 32 Kulamawe**. That the interested party also misled this Court on the issue of the properties i.e. Kiirua/ Naari/96 is said to measure 15 Acres when it is actually 2 acres. Kiirua/ Naari/46 and Kiirua/Nkando/46 are repeated to make the estate look vast and that the interested party painted the properties as bare.

4. The interested party filed a response vide Replying Affidavit dated 10th January 2019 pleading this Court to decline the request since there is no mistake or error apparent on the face of the record and that the application has not brought any new material before the court. She did not provide specific details on the allegations by the petitioner.

5. I have taken time to consider this application as well as the submissions made by both parties. The court is perturbed by the allegations made by the petitioner on the errors herein. The interested party is of no help for she merely denied the existence of errors without providing proof thereof. In a succession case, the court must be certain about and should ascertain the estate property.

6. The petitioner as well as the interested party is responsible for any errors in the description or amount of the estate property. See the lists of the assets of the deceased in the petition, affidavits and submission of parties. The court was also in a dilemma in ascertaining some of the properties of the deceased. It expressed as much on land No 46-which at one point was described as KIIRUA/NAARI/46; at other times as KIIRUA/BARRIER/46 and at other times as KIIRUA/NKANDO/46.

7. In the premises, I will defer determination of the application for review until such time parties will provide the registration record of the properties in issue. Both parties are therefore ordered to provide these documents in an affidavit within 14 days. The relevant land registrars are hereby directed to provide the parties with the said records without delay. I will assign this case another date for directions. It is so ordered.

Dated signed and delivered in open court this 28th day of May 2019

F. GIKONYO

JUDGE

In presence of

M/S Munga for respondent

Carlpeters for Mutuma for petitioner

F. GIKONYO

JUDGE