



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 299 OF 1997

IN THE MATTER OF THE ESTATE OF MWITHIRWA

THIURU Alias M'MWUTHERWA THIRO (DECEASED)

CAROLINE NCHARIBA M'MWITHIRWA.....PETITIONER/APPLICANT

VERSUS

GEORGE MWENDA KIMATHI.....PETITIONER/RESPONDENT

STEPHEN KIRIMI RUTERE.....1ST OBJECTOR/RESPONDENT

FLORENCE GAITI SAMWEL.....2ND OBJECTOR/RESPONDENT

RULING

1. **Caroline Nchariba M'Mwithirwa ("the applicant")** has filed an application dated 25/6/19 seeking the review of this Court's Judgment dated 6/12/18 and the consequent rectification of the grant of letters of administration issued on that date.
2. The application was supported by her affidavit sworn on the same date. The grounds upon which the application is predicated upon is that this Court distributed to the applicant **Parcel No. Abogeta/L-Chure 794** measuring **1.49 Acres** wholly which was not available for distribution. She contended that the said property had been bequeathed to the government for building of a chief's camp. That the government has since constructed, *inter alia* a chief's office, community health centre and an education office.
3. The applicant contends that this information had been disclosed in an earlier affidavit but the Court ignored the same. That it was therefore necessary to rectify the certificate of confirmation and take into account the deceased's aforesaid bequest. The applicant attached copies of the permanent buildings which the government has since developed on the subject property.
4. The application was served upon the respondents who did not oppose the application. **Order 45 of the Civil Procedure Rules** relating to review is one of the Rules in the Civil Procedure Rules imported into the succession practice by **rule 63 of the Probate and Administration Rules**. Further, under **section 47 of the Law of Succession Act, Cap 160 Laws of Kenya**, this Court has jurisdiction to make any order for the ends of justice.
5. I have thoroughly checked in the entire record but I have not seen the Affidavit of the applicant sworn on 17/9/18 which she annexed to the current application. The same is nowhere on record. The information contained therein was not brought to the attention of the Court. The only affidavits on record by the applicant were those sworn on 23/5/17 and 31/10/17 which did not disclose the matters being alluded to in the current application. The evidence on record did not show that **L.R. Abogeta/L-Chure/794** had been bequeathed by the deceased before his demise as it is now being contended.
6. That notwithstanding, I have considered the statements made on oath by the applicant which are not denied. There are photos which have been produced to support the averments by the applicant. On the subject property, there sits thereon a chief's camp, a Community Health Centre as well as an educational office.
7. That being the case, that property was obviously unavailable for distribution. Accordingly, I find the application to be meritorious and allow the same. The Judgment of this Court made on 6/12/18 is accordingly reviewed and the distribution rectified as follows:-

a) **ABOGETA/LOWER CHURE/794**

Igoki Location Chief's Camp

b) **ABOGETA/LOWER CHURE/795**

i) Juliet Mbuthu Kimathi

George Mwenda Kimathi

Rose Gakii

Irene Kagwiria

Duncan Mbae - 0.83Ha equally

ii) Florence Gaiti Samuel - 0.83 Ha

iii) Caroline Nchabira M'Mwithirwa - 0.83 Ha

c) **ABOGETA/LOWER CHURE/765**

Stephen Kirimi Rutere

DATED and **DELIVERED** at Meru this 24th day of October, 2019.

A. MABEYA

JUDGE