



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 2548 OF 2000**

**IN THE MATTER OF THE ESTATE OF NDIYEINE OLE SIMEL - (DECEASED)**

**PAUL SALAU NTIYOINE.....1<sup>ST</sup> APPLICANT**

**JEREMIAH SIRONET NTIYOINE.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**ELIZABETH NAISOI SOIKAN.....1<sup>ST</sup> RESPONDENT**

**FRIDAH MELLAU SOIKAN.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The remedy of review under **section 80** of the **Civil Procedure Act** and **Order 45** of the **Civil Procedure Rules** is available to a person who is aggrieved by an order or decree which is appealable but from which no appeal has been preferred or from which no appeal is allowed, and from the discovery of any new and important matter or evidence or error apparent on the face of the record or for any other sufficient reason, desires to obtain review (**Yani Haryanto –v- Ed and F. Man (Sugar) Ltd, Civil Appeal No. 122 of 1992**). The court will only act to grant review if it is shown that the new material or evidence could not have been obtained if the applicant had acted with due diligence (**Jackson Gatere –v- Mount Kenya Bottlers Ltd, Civil Appeal No. 107 of 1995 ([1995] LLR 7092)**). In **Nathan Ondegu Mdeizi –v- National Housing Corporation [2000] LLR 7639** it was reiterated that the remedy of review would only apply where there is discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge or could not be produced by the applicant at the time the order was made.

2. The 1<sup>st</sup> and 2<sup>nd</sup> applicants were two of the administrators of the estate of the deceased Ndiyeine Ole Simel who died intestate on 5<sup>th</sup> September 1991. Their brother Samson Soikan subsequently died leaving two daughters (the respondents). A grant was issued on 31<sup>st</sup> July 2001 and confirmed on 19<sup>th</sup> November 2002. In the confirmation the administrators distributed the estate and gave each respondent 10 acres of Kajiado-Olchoro-Onyore/1712. The respondents were minors. The 1<sup>st</sup> applicant was registered to hold 10 acres in trust for the 1<sup>st</sup> respondent until she was of age. The 2<sup>nd</sup> applicant was registered to hold 10 acres in trust for the 2<sup>nd</sup> respondent until she was of age. In the applications dated 22<sup>nd</sup> June 2015 and 24<sup>th</sup> August 2015 the respondents sought that the trusteeship be terminated for the applicants to surrender the respective parcels to them. The applicants had refused and/or neglected to give them the parcels, and were instead offering 5 acres each. They gave various reasons for being unable to give the full 10 acres each. The court allowed the applications and ordered each applicant to honour the distribution documented in the certificate of confirmation. The confirmation had not been disturbed, amended or rectified for about 13 years as the respondents grew. The applicants in their application dated 1<sup>st</sup> August 2016 seeking the review of the ruling.

3. I have looked at the grounds in the application for review. They raise the fact that the acreage of the

deceased's land was subsequently surveyed to reveal that it was 165 acres and not 200 acres that was the basis of the distribution; that 18 acres (including the respondents' entitlement of 3 acres) was sold to get Kshs.3,600,000/= which had been used to build 18 shops three of which had been allocated to the respondents thereby reducing their acreage by 3 acres; that the respondents' father had sold 3 acres to one John Masine Moiko thereby further reducing their acreage by 3; and that respondents father had further sold 3 acres of their entitlement to Margaret Wanjiku Gathigi which had further reduced their acreage by 3.

4. It is clear that all these matters being raised by the applicants were raised in their opposition to the respondents' applications whose ruling is sought to be reviewed. The matters were urged in the applications and on each a decision was made in the ruling. These issues do not therefore constitute any new and important matter or evidence that can form the basis for review.

5. In short, the application dated 1<sup>st</sup> August 2016 and filed on the same day by the applicants has no merits and is hereby dismissed with costs.

**DATED and SIGNED at NAIROBI this 22<sup>nd</sup> day of MARCH 2017.**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 29<sup>TH</sup> day of MARCH 2017.**

**R.E. OUGO**

**JUDGE**