

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 1638 OF 1993

IN THE MATTER OF THE ESTATE OF SIMON NDUNG'U

KIHONGE (DECEASED)

RULING

1. On 10th June 2016, I delivered a judgment wherein I confirmed the grant and ordered distribution of the estate in the terms proposed in the judgment.

2. The said judgment provoked the filing of several applications for review. The first application is dated 30th June 2016 brought at the instance of the 3rd administratrix. She states that two of the assets allocated to her did not exist, that she had bought one of the assets for a Peter Kariuki, her family had extensively developed a property that the court ordered to be sold and that there were errors on record.

3. There is a summons by the 2nd administratrix dated 1st September 2016. The applicant raises several issues that one of the assets has been extensively developed by survivors of the deceased who have not been allocated shares in it, that several dependants have since died leaving no dependants and that there are glaring errors on the face of the record. She alternatively seeks leave to appeal the judgment.

4. The last application is by the 1st administratrix, and is dated 7th September 2016. Her complaint is that some of the assets distributed did not exist, and that two of the assets distributed to her jointly with another are her matrimonial homes, which she had developed extensively, and therefore the two should have been devolved upon her solely. She also asks for leave to appeal the judgment.

5. The applications were disposed of by way of written submissions that were highlighted on 10th July 2017. I have read through the written submissions and gone through the record of the oral highlights and noted the arguments made therein.

6. The arguments advanced clearly indicate that the applicants are dissatisfied with the judgment delivered on 10th June 2016. The issues raised now are matters of evidence that ought to have been placed before the court at the time I heard the confirmation application. The applicants had the opportunity to place the material before the court then, they did not avail themselves of the opportunity. I am talking about the assets that they allege do not exist, yet they were listed in the petition and their proposals for distribution. The developments that they allege they did on some of the assets, the matter of entitlement by Peter Kariuki to a share of one of the assets, among others.

7. If the applicants are unhappy with the distribution ordered by the court, they are at liberty to appeal against it. I do not see any material before me which can be basis for review of the judgment. I shall accordingly grant the applicants leave to appeal against the said judgment. Leave shall be for forty-five (45) days. For avoidance of doubt, I have declined to review the judgment on record, and I do hereby dismiss the applications dated 30th June 2016, 1st September 2016 and 7th September 2016. Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 8TH DAY OF DECEMBER, 2017.

W. MUSYOKA

JUDGE