



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CIVIL APPEAL NO. 84 OF 2010**

**EDITH IRIMA MBANDITHIO.....APPELLANT**

**VERSUS**

**JAMES NGARI NJERU.....RESPONDENT**

**RULING**

1. This is an application for review brought under chamber summons dated 27<sup>th</sup> August 2015 in respect of the judgement of this court (Ong'udi, J) delivered on 9<sup>th</sup> September 2014. The appellant/applicant seeks the following orders:
  - a. That the respondent James Ngari Njeru be awarded 0.46 Ha out of parcel of land Nthawa/Gitiburi/2127 registered in the name of the applicant Edith Irima Mbandithio.
  - b. That the applicant Edith Irima Mbandithio be awarded parcel of land No. Nthawa/Gitiburi/2128 wholly.
2. The order sought to be reviewed is in relation to land parcel No. Nthawa/Gitiburi/2128 which had shared that land parcel between the applicant to inherit 1.35 Ha and the respondent to inherit 0.46 Ha. The application is supported by a supporting affidavit. According to the applicant, land parcel No. Nthawa/Gitiburi/2128 was given to her by her late father Njeru Itumbi during his lifetime. She further states that she occupied that parcel of land in 1975 together with her children up to date.
3. Furthermore, she has stated that her late father warned the respondent against forcefully taking away the above named parcel number from her. It is also her affidavit evidence that the father warned him against filing any court proceedings against the applicant. This notwithstanding, the respondent has disobeyed their father's directive and has forcefully attempted to take away the said land from her. He also went further to file succession proceedings in respect of their father's estate without her knowledge and that she only came to know about it from a good Samaritan.
4. In her affidavit also the applicant has stated that as a result of this dispute the respondent, herself and family members have experienced several misfortunes which she asserts are as a result of disobeying their father's wishes. In order to avoid further misfortunes, she has requested this court to vary its judgement which was delivered on 9<sup>th</sup> September 2014. She also says that she is ready and willing to transfer a portion measuring 0.46 Ha to the respondent out of her parcel No. Nthawa/Gitiburi/2127 in place of the portion awarded to the respondent out of parcel No. Nthawa/Gitiburi/2128.
5. Finally she states that the court should order registration of Nthawa/Gitiburi/2128 in her name wholly as per her deceased father's wishes.
6. During the hearing of the application in court, the applicant repeated the contents of her affidavit which I have set out above. The respondent opposed her application in his submissions in court.
7. This is an application for review of this court's order dated 9<sup>th</sup> September 2014. In terms of Order 45 of the 2010 CPR a party may apply for review of a court judgement if the following conditions

are shown to exist:

- a. If there is an error or mistake on the face of the record, or
  - b. Or there is a discovery of a new and important matter which after exercising due diligence after trial was not available but that new matter came to his knowledge after the judgement had been delivered, or
  - c. for any other sufficient reason.
8. The reason why review is sought is that the respondent allegedly went against the wishes or directives of his father. As a result a curse has befallen their family because the respondent allegedly went against the directives of his father. In order to avoid further misfortunes, the review is sought to avoid them.
9. It is clear from the foregoing that the grounds upon which review of a court judgement is entertained do not include beliefs in curses allegedly arising from one of the parties going against the wishes of a deceased father. In the circumstances, the application is not merited and is hereby dismissed.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **18<sup>th</sup>** day of **FEBRUARY 2016**

In the absence of both applicant and respondent

Court clerk Njue

**J.M. BWONWONGA**

**JUDGE**

**18.02.16**