



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

SUCCESSION CAUSE NO. 41 OF 2015 AND NO. 144 OF 2004

IN THE MATTER OF THE ESTATE OF JOHNSON KINYUA NJAGE (DECEASED)

JAMES NYAGA KINYUA.....OBJECTOR

VERSUS

DEWITT NJERU SIMON.....ADMINISTRATOR

RULING

1. This ruling is in respect of the rectification of the confirmed grant in the two consolidated files. In succession cause No. 144/15 the amended confirmed grant was made by Lady Justice Muchemi on 15th June 2015. The other grant in succession cause No 41/15 is closely related to the above confirmed grant. The deceased in succession cause No. 144/04 is the father of the deceased in succession cause No. 41/15.

2. The law applicable in this matter is *Order 45 of the 2010 Civil Procedure Rules* which has been imported by *Rule 63 of the Probate and Administration Rules into the Law of Succession Act (Cap 160) Laws of Kenya*. Because of this, the Rules that govern applications for review under *Order 45 of the 2010 Civil Procedure Rules* apply fully in this application.

3. It therefore follows that Lady Justice Muchemi who is currently stationed in Embu is the one who should hear this review application. The provisions of *Order 45* provide for review where there has been discovery of a new and important matter, that was unavailable at trial after exercising due diligence. Review is also permitted where there is an error or mistake apparent on the face of the record. Finally, it is also permitted for any sufficient reason. It is in the interests of judicial economy in terms of time and personnel that the matter be reviewed by Lady Justice Muchemi

4. In the light of the foregoing, I order that the application be placed before Lady Justice Muchemi for directions.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **29<sup>th</sup>** day **SEPTEMBER 2016**

In the presence of Mr. Ngari holding brief for Mr. Kitonga for the objector and Mr. Kamunyori for the administrator.

Court clerk Njue

**J.M. BWONWONGA**

**JUDGE**

**29.09.16**