

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 503 OF 1985

IN THE MATTER OF THE ESTATE OF MUHINDI KIGURU (DECEASED)

RULING

1. The Summons dated 29th August 2012, is premised on Order 45 of Civil Procedure Rules and Rule 63 of the Probate and Administration Rules. It seeks review of the judgment delivered herein on 15th July 2005.
2. The review is sought on the grounds that there is sufficient reason for a review of the mode of distribution adopted in the said judgment on the grounds that the same is not equitable. In the affidavit in support of the summons, the deponent, Peter Kiguru Muhindi, says that the beneficiaries are uncomfortable with the distribution adopted by the court, and prefer the one they had agreed on. They also state that giving one house of the deceased 25.7 acres out of Nyeri/Naromoru/382 as against 20 acres to be shared by the other houses was inequitable.
3. The judgment delivered on 15th July 2005 was on a Summons for confirmation of grant dated 17th June 2002. The application was contested by the 6th house of the deceased who claimed Nyeri/Naromoru/382 as property that the deceased had bequeathed to it and which it had also contributed towards its purchase and development. They pleaded that the same be allocated to the house in its entirety. The other houses wanted the property distributed amongst all the other houses as per the terms of their consent to the distribution proposed by the Public Trustee.
4. The dispute was heard by Koome J, who took oral evidence from the parties. In the end the court established that the deceased had other properties, being Loc. 4/Ngararia/316 and 659, and that those other lands had been distributed in 1977 to the other houses of the deceased as the deceased had settled them in those properties. The court found that the 6th house always resided on Nyeri/Naromoru/382, and had contributed in its acquisition and development. It was established though that some members of some of the other houses had worked on portions of the Naromoru property. After taking those circumstances and factors into account, the court awarded 25.7 acres of the Naromoru property to the 6th house, leaving 20 acres to be shared by the other houses.
5. Koome J. heard the parties and in the judgment of 15th July 2005 gave due consideration to all the relevant facts and circumstances before ordering distribution in the terms set out therein. I do not find any sufficient reason for interfering with the said judgment. Consequently I do not find any merit in the application dated 29th August 2012, and I hereby dismiss the same with costs.

DATED, SIGNED and DELIVERED at NAIROBI this 23RD DAY OF OCTOBER, 2015.

W. MUSYOKA

JUDGE