



**In re Estate of Waruru Kairu (Deceased) (Succession Cause 2525 of 1997)  
[2004] KEHC 2425 (KLR) (Family) (14 May 2004) (Ruling)**

*In Re the Estate of Waruru Kairu [2004] eKLR*

Neutral citation: [2004] KEHC 2425 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2525 OF 1997**

**MK KOOME, J**

**MAY 14, 2004**

**RULING**

1. The Co-administrator of the deceased estate, George Kairu Waruru filed the Summons seeking for the review of the order by this honourable court made on 2nd December 1999.
2. The application is based on the ground that there is an error apparent on the face of the record.
3. The gist of the application is that, the grant of Letter of Administration issued on 23rd June 1998 was coming up for confirmation before Hon. Kuloba J.
4. Upon hearing submissions by the objector/protester Alice Wangui Nganga and upon looking at the proposed schedule of distribution, the court directed that the objector's share be increased to one acre.
5. The order did not direct from which parcel of land the one acre was to come from but. When the order was extracted, it showed that she was entitled to 1 acre from Title Nos Limuru/Ngecha/477 and Njoro/Ngata B2 Ngecha/271.
6. According to the counsel for the co-administrator there is an error apparent on record as the judge meant that the objector share in Title No. Limuru/Ngecha/477 be increased to 1 acre as she already had been provided for 1.50 acres according to the schedule which was attached to the application for confirmation.
7. This application was opposed by the objector. She referred to the ruling by Hon. Kasanga Mulwa J. delivered on 28th June 1999. In that ruling the judge rejected the proposed distribution and had this to say:

“I see no fairness in this distribution as presented to the court. The estate is being distributed intestate and it is imperative that the distribution must be in accordance with the provisions of the law of succession.



I therefore order that the administrators redistribute the estate giving Alice land where her house is. The distribution must be fair to all the beneficiaries with regard to the whole estate."

8. Counsel for the objector submitted that Kuloba J. took into account the above ruling and ordered that the objector's share should be equalized with the other beneficiaries.
9. I have given due consideration to the application for review. I have also given attention to both rulings by Mulwa J. and Kuloba J and more so the provisions of section 40 of the Law of Succession which deals with the intestate polygamous estates. It is imperative that the deceased estate be shared equally amongst the houses, according to the number of children in each house but also adding any wife surviving him as an additional unit to the number of children. The intention of the court in the two rulings was to have Alice treated like all other beneficiaries the deceased children from the 3rd house. Hence be allocated an equitable share of the deceased properties in both parcels of land.
10. Accordingly I see no error on the face of the record. Secondly this application for review is brought under order 44 of the Civil Procedure Rules. It is required under order 44 of the Civil Procedure Rules that the party who wishes to apply for a review of a decree or order it is mandatory for the party to draw up the decree or order that it sought to be reviewed and attach it to the application for review. Refer to the case of Gulamhussein Mulla Jiranji & Another vs Ebrahim Julla Jiranji & Another C.A. for East Africa 1929/1930 (Law refer of Kenya VXII In this regard, the applicant did not draw up the order or decree as none was attached to the application for review. The upshot of the above is that the applicants summons for review dated 28th November 2003 should fail. I award the costs to the objector.

It is so ordered.

**RULING DELIVERED ON 14TH MAY 2004.**

**MARTHA KOOME**

**JUDGE**

