



**In re Estate of the M'Marara M'Rwara (Deceased) (Succession Cause 148 of 1997) [2024] KEHC 383 (KLR) (22 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 383 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
SUCCESSION CAUSE 148 OF 1997  
TW CHERERE, J  
JANUARY 22, 2024**

**IN THE MATTER OF THE ESTATE OF THE M'MARARA M'RWARA – DECEASED**

**BETWEEN**

**MAGAMBO M'RWARA ..... PETITIONER**

**AND**

**M'MWORIA M'RWARA ..... OBJECTOR**

**AND**

**CHARITY MUGURE ..... APPLICANT**

**JAMES RUCHUGO ..... APPLICANT**

**SAMSON K KIAMBI ..... APPLICANT**

**MESHACK NKONGE M'MARANGU ..... APPLICANT**

**RULING**

1. By ruling dated 11<sup>th</sup> October, 2017, Onginjo J, from paragraph 2 of page 11 stated as follows:

“I have considered the protest to confirmation and affidavit in support by Jame Ruchugo Magambo as well as supplementary affidavit by M'Mworia M'Rwara and find they are not agreeing as distribution. By an order made on 27<sup>th</sup> 2010 it was established that the D.C. Meru Central District had identified M'Mworia M'Rwara and M'Magambo M'Rwara (Now deceased) as rightful heirs to the estate of M'Marara M'Rwara and Misheck Nkonge and Samson K Kiamba as buyers to the decease estate. The documents annexed to affidavits by said interested parties indicate they purported to purchase part of the estate from the late M'Magambo M'Rwara before Letters of Administration was confirmed to intermeddling with the intestate estate of the deceased. This court is seized with jurisdiction to distribute



the estate of the deceased to the rightful heirs but not to interested parties/purchasers or whatever description they may have as the law of succession deems them to be strangers in the cause. The only recourse they have is to pursue the purported vendor upon their portions of the estate being distributed to them. The only equitable manner of distribution that this court considers reasonable in the circumstances is that the 2 beneficiaries share the estate equally. That is each to get half of each of the parcels unless they compromise otherwise to suit what is already on the ground.” (Emphasis added).

### **Analysis and determination**

2. I have considered the application for review dated 12<sup>th</sup> October, 2023 in the light of the supporting affidavit sworn on even dated by M’Mworia M’Rwara vis a vis the court’s ruling dated 11<sup>th</sup> October, 2017.
3. The law governing issues of review orders is anchored under Section 80 of the *Civil procure Act* and Order 45 (1) of the *Civil Procedure Rules*. Under Order 45(1) of the Rules, a party seeking review must prove that the application is filed without unreasonable delay; discovery of new or important matter or evidence which after the exercise of due diligence, was not within his knowledge, or could not be produced by him at the time when the decree was passed or the order made; or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. This position was emphasized in the case of *In re Estate of Maero Tindi (Deceased)* [2018] eKLR.
4. A proper reading of the foregoing passage of the ruling dated 11<sup>th</sup> October, 2017 evidently identifies the heirs of the deceased to whom the estate was distributed as M’Mworia M’Rwara and M’Magambo M’Rwara (Now deceased).
5. The Certificate of Confirmation of Grant dated 11<sup>th</sup> October, 2018 in which the estate was distributed in equal shares to M’mworia M’rwara and James Ruchugo (and other surviving Children to share in equal shares the inheritance of the late Magambo M’Rwara) therefore no doubt at variance with the court ruling and the inadvertent error cannot be allowed to stand.
6. Though served, the Respondent and his counsel neither attended court nor was any response to the application filed.
7. Consequently, it is hereby ordered as follows:
  1. The Certificate of Confirmation of Grant dated 11<sup>th</sup> October, 2018 shall be rectified as follows:
    - i. Lower Abothuguchi/l-kijja/135 shall be distributed in equal shares to M’Mworia M’Rwara and the estate of M’Magambo M’Rwara (Now deceased)
    - ii. Lower Abothuguchi/kijja/362 shall be distributed in equal shares to M’Mworia M’Rwara and the estate of M’Magambo M’Rwara (Now deceased)
    - iii. Lower Abothuguchi/gitie/347 shall be distributed in equal shares to M’Mworia M’Rwara and the estate of M’Magambo M’Rwara (Now deceased)
  2. This cause shall be mentioned on 29<sup>th</sup> April, 2024 to confirm distribution of the estate and for further orders and/or directions

**DATED AT MERU THIS 22<sup>ND</sup> DAY OF JANUARY 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**



Appearances:-

Court Assistants - Kinoti/Munene

For Applicant - Mr. Kaimenyi for Kaimenyi Kithinji & Co. Advocates

For Respondent - N/A for Kiogora Arithi & Co. Advocates

