



REPUBLIC OF KENYA



**In re Estate of Julia Karambu M'Rukaria (Deceased) (Succession Cause
201 of 1993) [2024] KEHC 7331 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7331 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 201 OF 1993
TW CHERERE, J
JUNE 13, 2024**

BETWEEN

ROBERT RUKARIA MUGAMBI PETITIONER

AND

TABITHA KANUGU 1ST OBJECTOR

JENIFFER NKIROTE 2ND OBJECTOR

JOYCE NCURUBI 3RD OBJECTOR

ELIZABETH M'IKIUGU 4TH OBJECTOR

AND

PHINEAS GITONGA MURIITHI INTERESTED PARTY

JOSEPH MWITI RINGINE INTERESTED PARTY

JAMES KOOME GIDEON INTERESTED PARTY

LOISE GAKII MARETE INTERESTED PARTY

RULING

Introduction

1. By a ruling dated 27th April, 2023, this court made the following orders:
 1. The Land Registrar Meru is directed to cancel all subdivisions arising out of LR.No. Nkuene/ U-Mikumbune/902 and revert the original title to the name of Julia Karambu Rukaria (Deceased)



2. The estate of the deceased in LR.NO. Nkuene/U-Mikumbune/902 shall be distributed in terms of the Certificate of Confirmation of Grant dated 23rd September, 2019 which distributed 5 acres to the Petitioner and one acre each to the Objectors
3. In the interest of justice, it is encouraged that at the time of partitioning, as much as it is possible the Petitioner's portion of 5 acres covers the area sold to the Interested Parties so that he can then lawfully transfer those portions to them.
4. The costs of this application shall be borne by the Petitioner
5. Mention on 25th September, 2023 to confirm distribution and for further orders if necessary.
2. By summons dated 23rd October, 2023, Applicants seek the following orders:
 1. That the Honourable Court do review and or vary the ruling dated 27th April, 2023 and rectify the grant issued on 20th June, 2023 to inter alia:
 - a. Capture the correct acreage of LR. Nkuene/L-Mikumbune/902
 - b. remove and or strike out the name of Robert Rukaria Mugambi from the distribution schedule
 - c. Capture the correct names of the beneficiaries
 2. The grant be confirmed by distributing LR. Nkuene/L-Mikumbune/902 in equal shares to Tabitha Kanugu Mugambi, Jeniffer Nkirote, Elizabeth Ntui Kiugu and Joyce Ncurubi M'Rukaria.
 3. Costs be provided for
3. The summons is based on the grounds that Robert Rukaria Mugambi (Petitioner) is not entitled to LR. Nkuene/L-Mikumbune/902 having benefited from LR. Nkuene/L-Mikumbune/903 and further on the ground that LR. Nkuene/L-Mikumbune/902 measures only 4.45 acres.
4. James Koome Gideon (3rd Interested Party) opposed the summons vide a replying affidavit sworn on 14th November, 2023 on the grounds that he had purchased LR.NO. Nkuene/U-Mikumbune/1983 from the Petitioner in 2019 and he stands to lose his land if the orders sought are granted.
5. The Petitioner, 1st, 2nd and 4th Interested Parties did not oppose the application.

Analysis and Determination

6. I have considered the summons in the light of the affidavits on record and submissions filed on behalf Objectors/Applicants and the issue for determination is whether a case has been made for review of the ruling dated 27th April, 2023.
7. Review of orders is governed by Section 80 of the [Civil Procedure Act](#) which provides inter alia: -
Any person who considers himself aggrieved—
 - a. by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or
 - b. by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.



8. Order 45 rule 1 of the *Civil Procedure Rules* on the other hand provides that: -
- (1) Any person considering himself aggrieved—
 - (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or
 - (b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and 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, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.
9. The Court of Appeal in *Anthony Gachara Ayub v Francis Mahinda Thinwa* [2014] eKLR restated that the main grounds for review which are discovery of new and important matter or evidence; mistake or error apparent on the face of the record; or for any other sufficient reason and most importantly, the application has to be made without unreasonable delay.
10. The ruling from which the Applicant seeks to review was delivered on 27th April, 2023. The application for review was filed timeously on 23rd October, 2023.
11. In *Nyamogo and Nyamogo Advocates v Kogo* [2001] 1 EA 173, the Court of Appeal stated that any alleged error on the face of the record that can only be established by a long-drawn process of reasoning, would not be an error apparent on the face of the record.
12. Mativo J (as he then was) in *Republic v Advocates Disciplinary Tribunal Ex parte Apollo Mboya* [2019] eKLR that:
- “The starting point is that a review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. Nor can it be a ground for review that the court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law. Misconstruing a statute or other provision of law cannot be a ground for review”.
13. I have carefully perused the court file and I have noted by an order dated 23rd September, 2019, Onginjo J. directed that the estate of the deceased comprised in LR.NO. Nkuene/U-Mikumbune/902 be distributed to Tabitha Kanugu Mugambi, Jeniffer Nkirote, Elizabeth Ntui Kiugu and Joyce Ncurubi M'Rukaria but the Certificate of Confirmation of Grant dated 23rd September, 2019 was erroneously drawn thereby distributing 5 acres to the Petitioner and one acre each to the Objectors.
14. From the foregoing, the summons dated 23rd October, 2023 is hereby allowed in the following terms:
1. The estate of the deceased in LR.NO. Nkuene/U-Mikumbune/902 shall be distributed in equal shares to Tabitha Kanugu Mugambi, Jeniffer Nkirote, Elizabeth Ntui Kiugu and Joyce Ncurubi M'Rukaria in terms of the order of rectification issued by Onginjo J. on 23rd September, 2019
 2. As stated in the ruling dated 27th April, 2023, the Petitioner and Interested Parties have no share in LR.NO. Nkuene/U-Mikumbune/902



3. The Certificate of Confirmation of Grant dated 20th June, 2023 shall be rectified in terms of order (1) above
4. Mention on 03rd October, 2024 to confirm distribution

DATED AT MERU THIS 13TH DAY OF JUNE 2024

T. W. CHERERE

JUDGE

Appearance

Court Assistants - Kinoti /Munene

For Petitioner - Mr. Karatu for Kuria Karatu & Co. Advocates

For Objectors - Ms. Mugo for Gichunge Muthuri & Co. Advocates

For Interested Parties - Mr. Miriti for Muchoma Law Advocates

