



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC NO. 59 OF 2005

PHYLIS KAMINCHIA M'MIRITI..... 1ST PLAINTIFF

REBECCA MWITI MUNGORWE..... 2ND PLAINTIFF

JULIA NCHENGE.....3RD PLAINTIFF

RUTH NKUENE..... 4TH PLAINTIFF

VERSUS

M'RUNGENTU MBOGORI.....1ST DEFENDANT

DAVID SILAS SAFARI..... 2ND DEFENDANT

JOSEPH KITHINJI KANGI.....3RD RESPONDENT

RULING

1. The application dated 17.12.2020 seeks for review of the judgment delivered on 25.4.2019 in terms of the acreage and settlement on the ground. The application is supported by two affidavits sworn on 17.12.2020 and 11.11.2021 respectively by the 2nd plaintiff.

2. The grounds upon which the application is made are that

the applicants were to share the original **L.R No. Abothuguhci/Gaitu/69** in 4 equal portions by each getting 2.6 acres. However when the land surveyor visited the suit land to effect the decree he advised if possible that the parties do remain on their portions of land in which they have been occupying to avoid damage and or destruction that may be occasioned as a result of the subdivision. The applicants have attached a copy of the surveyor's sketch map marked as **JMM "2"**.

3. In the supplementary affidavit the applicants have at paragraph 4 thereof agreed by consent to share the remainder of 0.4 acres in favour of Ruth Nkuene and Julia Nchenge each getting 0.2 acres over and above the proposal at paragraph 5 of the supporting affidavit.

4. This court delivered a partial ruling over this application on 14.4.2021 but ordered that the parties to appear in court in person for further verification after which a final decision shall be made.

5. On 4.10.2021 the following parties attended court:

i. Phillis Kaminchia holder of ID card No. xxxx

ii. Ruth Nkuene

iii. Julia Nchege

iv. Rebecca Mwiti holder of ID No. xxxx.

6. The court made a further order that all beneficiaries attend court on 4.11.2021. Parties complied and brought with them the original identity cards for verification. The persons present and who the court sought their input regarding the proposed settlement are:-

- Phyllis Kaminchia M'Miriti ID No.xxxx

- Rebecca Mwiti Magorwe ID No. xxxx

- Julia Nchege Ndatho ID No. xxxx

- Ruth Nkuene Miriti ID No. xxxx.

7. Mr. Orimbo advocate for the plaintiffs submitted the plaintiffs confirmed that they did not wish to substantially review the judgment and that they wanted to ensure the subdivisions aligned with the wishes of the deceased and the realities on the ground.

8. **Section 80** of the **Civil Procedure Act** as read together with **Order 45 Rule 1** allows a party to move the court to correct a decree where there is a mistake or error apparent on the face of the it, where there are sufficient reasons and if there is discovery of new and important matter which after the exercise of due diligence was not within the knowledge of the applicant at the time the decree was passed. **See Muyodi –vs- Industrial and Commercial Development Corporate & Another 1 E.A 234 (unreported)**

9. The applicants have given an explanation as to why it is important to review the judgment and align it with the exact situation on the ground so as to avoid damage which may be occasioned by the subdivisions if the surveyor were to redraw their boundaries without being mindful of the developments each of them has made on her portion of land.

10. The second ground is that the names appearing in the pleadings appear to be different with the ones in their respective ID cards. Each plaintiff attached a copy of his ID card to the supplementary affidavit.

11. In my view and having interviewed the applicants, in the presence of their advocates and counsel for the defendants, I find it is in the interest of justice that the application be allowed.

12. The court therefore makes an order for the recall and amendment of the decree issued on 21.8.2011. The same shall be amended to reflect the correct names of the plaintiffs together with their respective acreage.

13. There would be no orders as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 20TH DAY OF DECEMBER, 2021

In presence of:

Wambua for plaintiffs/applicants

J.G. Gitonga for respondents

Court Assistant – Kananu

HON. C.K. NZILI

ELC JUDGE