



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 691 OF 2012

IN THE MATTER OF ESTATE OF NYAGA MAMITHI(DECEASED)

WILLIAM NYAGA MAMITHI.....PETITIONER

VERSUS

MUMBI MARUMBO.....PROTESTOR

RULING

1. This is a ruling on an application for review of judgement filed through a letter by A.M Nganga and company advocates dated 17th October 2020. The request refers to this court's judgement delivered on 13/03/2020 whose main finding was worded as follows:-

“For avoidance of doubt, Title No. Kirimukuyu/Mbogoini/247 shall be shared equally between William Nyaga Wamithi and Muthoni Wachira in equal shares absolutely. The grant of letters of administration intestate made to the petitioner is confirmed in the foregoing terms.”

2. It is pleaded that the judgement contains an error of names where the protestor Mumbi Marumbo was referred to in the judgement as Muthoni Wachira. It is this error that the counsel for the protestor A.M. Ng'ang'a & Company advocates seeks that it be corrected.

3. The procedure requires that any party applying for correction of any order in a judgement file a formal application which must be served on the opposite party. In this matter, the counsel for the protestor approached the court by a way of a letter which was not copied to the counsel of the opposite party. Under article 159 of the Constitution, I will not pay undue regard to technicalities and will proceed to deal with the letter as addressed to the court.

4. Rule 73 of the Probate Administration Rules empowers this court to make orders that may be necessary for the ends of justice or to prevent abuse of the due process of the court.

5. I have carefully perused the judgement of the court delivered on 13/3/2020 and noted that the dispute it was addressing was a protest that opposed the administrator's summons for confirmation of grant.

6. The administrator was a child of the deceased while the protestor was a wife of the brother of the deceased. The evidence on which the judgement was based was that the deceased asset Kirimukuyu/ Mbogoini/247 measuring one(1) acre was held by the deceased in trust for himself and the house of Mumbi Mamithi and therefore the protestor was entitled to a share of the estate.

7. In the same judgement, the judge said that the protestor Mumbi Mamithi ought to have filed a suit in a court possessed of the jurisdiction to determine the claim of trust but not to claim trust in this succession cause. The court observed:-

“No proceedings for a determination of a trust were taken and, accordingly, no declaration of trust by a court of competent jurisdiction has been made. It follows thatin the absence of a declaration of a trust, customary or otherwise, by a court of competent jurisdiction, this court cannot proceed to distribute the estate as if such trust exists. The protest would fail of that ground.

8. The Judge proceeded to distribute the estate of the deceased in accordance with the provisions of Section 38 of the Law of Succession Act.

9. The deceased was survived by two children the administrator William Nyaga Mamithi and his sister Muthoni Wachira. The final order of the court was that the estate of the deceased comprising of L.R Kirimukuyu/Mbogoini/247 measuring one(1) acre be shared between William Nyaga Mamithi and Muthoni Wachira in “equal shares absolutely”

10. The judgement was delivered on 13/03/2020 in presence of Ms. Mwai for Ng'ang'a for the protestor. Surprisingly it is the firm of Messrs Ng'ang'a & Co. Advocates who are asking this court through a letter to correct an error apparent on the face of the record having been represented in court during the delivery of the judgement.

11. In conclusion, it is my considered view that I find no error in the judgement as claimed. The reasoning of the judge is in agreement with the orders he made in the said judgement. The protestor ought to have appealed against the judgement of the court.

12. I find no merit in the letter dated 17/10/2020

13. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 13TH DAY OF MAY, 2021.

F. MUCHEMI

JUDGE

Ruling delivered through video link this 13th day of May, 2021.