

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO.104 OF1991

IN THE MATTER OF THE ESTATE OF THE LATE ALOISE MUGO NYAGA (DECEASED)

PUBLIC TRUSTEE.....PETITIONER/APPLICANT

RULING

1. The application is dated the 18/02/2021 and is premised under the provisions of Section 74 of the Law of Succession Act and Rules 49, 59(5) and 73 of the Probate and Administration Rules; the applicant seeks a review of the Order issued on the 30/11/1992 so as to remove the name of a deceased beneficiary and to also include a newly discovered assets to be included in the estate of the deceased and it be distributed to the beneficiaries;
2. The application is supported by the grounds on the face of the application and on the Supporting Affidavit dated 18/02/2021 made by **RODAH NJUGUNA**; therein she depones that she is a State Counsel in the Office of the Public Trustee and is duly authorized to make the affidavit;
3. The applicant deposes that **TERESIA WANJIKUMUGO** the widow of the deceased passed on the 27/02/2005 and prays that she be excluded from the list of the deceased's beneficiaries; a copy of the Death Certificate is annexed in support of the application; she further seeks for the inclusion of a newly discovered asset known as land parcel number **BARAGWE/THUMAITA/35** which was not included among the deceased's assets at the time of petitioning and confirmation of the Grant; she prays that it be included and distributed in line with the Family Agreement and the Consent to the mode of distribution dated 25/11/2020; copies of the two documents were also annexed to support the application;
4. The applicable law is found at Section 74 of the Law of Succession Act and Rule 63 of the Probate and Administration Rules – which allows a party who has discovered new and important matter(s) or evidence after the orders were made to apply for review to the court that issued the orders;
5. Upon reading the application and hearing the submissions of counsel appearing for the applicant, this court is satisfied that the prayers sought for review of the Order made on the 30/11/1992 is as envisaged under the provisions of the aforesaid provisions of the Law and is supported by a copy of the Death Certificate and a copy of the title document.
6. This court finds that this is a proper case for granting of the order for review; the application is therefore found to be meritorious and is hereby allowed.
7. The order granted on the 30/11/1992 is hereby reviewed as follows;
 - (i) The name of **TERESIA WANJIKU MUGO** be and is hereby excluded as a beneficiary to the estate of the deceased;
 - (ii) Land Parcel No. **BARAGWE/THUMAITA/35** be and is hereby included among the deceased's assets and it be distributed to all persons beneficially entitled in accordance with paragraph (8) of the Supporting Affidavit dated 18/02/2021.

Orders Accordingly

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 7TH DAY OF JUNE, 2021.

HON. LADY JUSTICE A. MSHILA

JUDGE