



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. 19 OF 2014

GENESIO MURITHI BORE (Legal Representative of the Estate of

M'BOORE MURANGA- Deceased.....1ST APPELLANT/ APPLICANT

FESTUS MWALIMU 2ND APPELLANT/APPLICANT

мбака муранга 3RD APPELLANT/APPLICANT

VERSUS

GENESIA CIARWIGI MUCHIRI RESPONDENT

RULING

1. Before me is a Motion dated 7/11/2019 brought under Section 1A, 1B, 3, 3A, 63(e) and 99 of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules seeking for orders to review, amend and/ correct the judgement delivered on 30/7/2017 and include one Raine Muranga alias Raini Mutegi Muranga brother to the deceased herein as among the deceased brothers who were supposed to get one acre each as ordered by the court.

2. The motion was based on the grounds on the face of it and on the supporting affidavit of Genesion Murithi Bore who stated that this court in its judgement found that all the deceased brothers were entitled to 1 acre each from Land Parcel No. Karingani/Ndagani/236. At page 5 of the said judgement the court held that the rightful beneficiaries were M'boore, M'muranga who was his late father, Festus Mwarimu, Mbaka Muranga, Raini Muranga alias Mutegi and Genesia Ciarwigi Muchiri. The said Raine Muranga alias Raini Mutegi Muranga alias Raini Muranga alias Raini who is his uncle and brother to the deceased was not party to this appeal although he was a party in the original suit and at page 11 of the judgement this court ordered that each appellant would get 1 acre each. Therefore it is only just and fair that the judgement be amended to include the said Raine Muranga. The omission is an error that founds a review of judgment. See Order 45 Rule 1 of the Civil Procedure Rules which sets out the grounds upon which an application for review ought to be based as follows:

“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 review of judgement to the court which passed the decree or made the order without unreasonable delay.”

3. In National Bank Of Kenya Limited v Ndungu Njau [1997] eKLR Kwach R.O, Akiwumi A. M & Pall G. S, JJA stated:-

“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.”

4. No prejudice will be occasioned to the petitioner or any other party for this is a right that had accrued to the applicant. Accordingly, it is clear from the judgement that all the deceased's brothers are entitled to one acre each from Land parcel No. Karingani/Ndagani/236.

5. Guided by the above authorities I find that indeed there was an omission in the orders that were made and consequently I amend as follows
LR No. KARINGANI/ NDAGANI/ 236 shall be shared as follows;

I. 1.15 acres shall go to the family of the deceased to be he by the respondent under the principle of representation

II. Each of the appellants including the said Raine Muranga alias Raini Mutegi Muranga alias Raini Muranga alias Raini shall get 1 acre.

III. Each party to bear its own cost.

Dated signed and delivered in open court this 19th day of February, 2020

F. GIKONYO

JUDGE

In presence of

Nyamu for appellants

Waweru for respondent – absent

Respondent – present

F. GIKONYO

JUDGE