



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO 255 OF 2010

IN THE MATTER OF THE ESTATE OF M' IPWI M' IKIUGU (DECEASED)

BEATRICE NKATHA M' IMPWI.....APPLICANT

VERSUS

MOSES GITUMA IMPWI.....RESPONDENT

JUDGMENT

1. This cause relates to the estate of **M'Impwi M' Ikiugu (deceased)** who died on 11th July 2018 leaving behind the following beneficiaries i.e. **Beatrice Nkatha M' Impwi (widow), Lucy Kiende Impwi, Gace Mwari M' Impwi, Catherine Mukiri Domisiano, Moses Gituma**. This court on 19th December 2018 delivered its judgement and distributed the estate of the deceased i.e. **Abothuguchi/Kariene/916, Abothuguchi/Kariene/2490, Abothuguchi/Kariene/2491** and monies in A/C No. [xxxx] in line with **Section 35 of the Law of Succession Act** equally amongst the beneficiaries of the deceased.

2. The petitioner filed an application dated 13th January 2020 seeking this Court to be pleased by consent to review the judgement delivered on 19/12/2018 and have the protestor Moses Gituma Impwi get land parcel Lr No. Abothuguchi/Kariene/291 only while the petitioner Beatrice Nkatha Impwi alongside Lucy Kiende Impwi, Grace Mwari M' Impwi and Catherine Mukiri Domisiano get land parcels Abothuguchi/kariene/2491 and 961 equally.

3. The application is supported by the sworn affidavit of **Beatrice Nkatha M' Impwi**, and consents of all the beneficiaries. The petitioner stated that she has consulted with a surveyor to subdivide the lands and established that it will not be feasible to share the lands into five equal shares as some beneficiaries will get a hilly and swampy area and/or narrow strips of uneconomical lands. That all beneficiaries have agreed to the new modes of distribution of the estate.

4. She emphasized that the family has buried the hatchet and resolved the outstanding family disputes; they considered the developments made by the parties on the land. That the petitioner has her home in **parcel No. Abothuguchi/Kariene/961** while the protestor has his home in **Abothuguchi/Kariene/2491** where he has made extensive developments.

5. The application was not opposed by the protestor.

Analysis and Determination

6. **Order 45** of the Civil Procedure Rules which governs review has been imported into succession law by **rule 63 of the Probate and Administration Rules**. An application for review in succession proceedings can be brought by a party to the proceedings, a beneficiary of the estate or any interested party. However, the application must meet the substantive requirements set out in Order 45 of the Civil Procedure Rules.

7. Under **Order 45 Rule 1 (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 review of judgement to the court which passed the decree or made the order without unreasonable delay."**

8. The grounds stated by the petitioner/ applicant herein neither relate to discovery of new matter nor an error apparent on the face of the record. The grounds would only be considered as a sufficient reason to order a review.

9. The application is anchored on the premise that the beneficiaries have since resolved their disputes after realizing that the distribution as ordered by the court is not feasible and reduces the shares into uneconomical portions of land. I do note that all the beneficiaries filed signed consents to the new mode of distribution. I also note that the proposed mode of distribution adheres to the principle of equity and equality in line with Section 35 and 38 of the Law of Succession Act.

10. Notably, **Article 159 (c) of the Constitution** places a duty on the court to promote alternative dispute resolutions such as reconciliation, mediation, arbitration and traditional dispute resolution mechanisms in the exercise of judicial authority. The amicable settlement of this dispute is laudable. I wish parties realized early enough that mutual settlement of family disputes brings peace and harmony in the family. A judgement arising from a judicial contest among the parties may not necessarily bring the much needed peace and harmony in the family. Despite the time that has passed by, these parties have agreed to mutually resolve their disputes. And, that fact together with the other reasons stated by the applicant amount to a sufficient reason to review the court's judgement. Accordingly, I review the mode of distribution herein and adopt the proposed mode of distribution. Consequently, the earlier certificate of confirmed grant is set aside and a new one shall be issued in the following terms;

Monies in A/C No. [xxxx] Equity Bank Meru Branch

To be shared equally amongst; **Beatrice Nkatha M' IMPwi (widow), Lucy Kiende Impwi, Gace Mwari M' IMPwi , Catherine Mukiri Domisiano, Moses Gitumwa M' IMPwi**

Abothuguchi/Kariene/2491

Moses Gitumwa M' Impwi-Whole

Abothuguchi/Kariene/2490 & Abothuguchi/Kariene/2491

To be shared equally amongst; **Beatrice Nkatha M' IMPwi (widow), Lucy Kiende Impwi, Gace Mwari M' IMPwi , Catherine Mukiri Domisiano.**

Dated, signed and delivered at Milimani Nairobi this 21ST day of APRIL 2020.

F. GIKONYO

JUDGE

Representation:

1. Gichunge Muthuri & Co. Advocates for the Petitioner

gmuthurilawfirm@yahoo.com

2. Moses Gituma Impwi, Protestor appearing in Person