



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE NO. 289 OF 2003

IN THE MATTER OF THE ESTATE OF THE LATE SAVERIO CHABARI GACHIU (DECEASED)

MIRITI CHABARI.....PETITIONER

-VERSUS-

ROSEMARY MUCECE.....APPLICANT

RULING

1. On 21st January 2019 this honourable court delivered its judgement distributing the estate of the deceased as follows;

ABOGETA/U-CHURE/239 MEASURING 4 ½ ACRES

(i) The estate of Gladys chabari Nyai

ABOGETA/L-CHURE/606

(ii) Miriti Chabari-whole

2. Rosemary Mucece thereafter filed application dated 28th February 2019 seeking review of the said judgement and further distribute the estate of the Chabari Nyai to its intended beneficiaries. She proposed that parcel No. Abogeta/ U-Chure/239 be distributed as follows; Rosemary Mucece John 1 ½ acres, Charity Wanja ½ Acre, Kinyua Chabari 2 Acres, the estate of Cecinta Kajuju ½ Acre.

3. The application was opposed by the petitioner herein through replying affidavit dated 1st October 2019. It was his averment that the application is an abuse of the court process as it seeks to distribute the estate of Nyai Charles Chabari to all the beneficiaries save for himself. That the court was categorical that Abogeta/U-Chure/239 should go to the estate of Gladys Nyai hence he should be an equal beneficiary of the estate.

4. The petitioner further stated that he had planted 6,000 tea bushes and 500 coffee bushes/ trees on the land for which he wants to be compensated.

5. The applicant filed a further affidavit in reply to the averments made by the petitioner dated 1st October 2019 that the parcels forming the assets of the deceased were distributed to the petitioner who acquired parcel No. Abogeta/L-Chure/606 measuring a whopping 3 acres and to the estate of the Gladys Nyai Abogeta/U-Chure/239 measuring 4 ½ acres to be distributed amongst the rest of the beneficiaries. That the petitioner cannot therefore lay a claim on Abogeta/U-chure/239 as he will be seeking to benefit twice from the estate of the deceased.

6. On 26/2/2020 this court directed the parties to file submissions in respect to the application. Both parties have since filed their respective submissions which I have dully considered.

ANALYSIS AND DETERMINATION

7. I have considered the application, affidavits as well as submissions filed by the parties. The request before the court is review of judgment so as to distribute the share of the estate of Gladys Chabari Nyai the rightful beneficiaries in accordance with the findings of the court in the said judgment. What does the law say about such application?

8. Review of judgment is governed by **Order 45** of the Civil Procedure Rules as imported into succession practice by **Rule 63 of the**

Probate and Administration Rules. Order 45 Rule 1 of the Civil Procedure Rules, 2010 provides as follows: -

45 Rule 1 (1) Any person considering himself aggrieved-

By a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

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.”

9. The reasons advanced speak to an apparent error on the face of the record or sufficient reason to review the judgment herein. An apparent error is one which is easily discernible from the record.

10. Upon meticulous analysis of the facts of the case, the court made certain pertinent findings and determination in the judgment under review. Of specific significance is paragraph 17 of the said judgment where court came to the following conclusions;

“Both parties agree that Miriti Chabari should get Parcel No. 606. I grant him. In light therefore I do find that Miriti is being selfish by giving his mother and brother only one acre yet he has the whole of Parcel No. 606. Accordingly, and as Gladys and Kinyua expressed satisfaction if they receive parcel No. 239 I so grant them...”

11. From the above analysis, findings and determination, the entire parcel No. 239 was to go to the mother and the other siblings other than Miriti. This finding and determination was not reflected in the final distribution of the estate of the deceased. The court, inadvertently made a general order that distribution of the said portion of land shall be to the estate of Gladys Chabari Nyai. This is an error apparent on the face of the record. The error has caused injustice to the applicants.

12. As I stated earlier, Miriti had found yet another opportunity arising from the error, to satisfy his intention of getting more land in the estate at the expense of the other beneficiaries. His argument that he is an equal beneficiary in the estate of Gladys Nyai is not for the love of the law or apt invocation of the principle of equality in inheritance, but for his own selfish reasons. Such approaches are loathed by law for being tainted with bad faith. I agree with the applicant's assessment of Miriti's intention; to get "double-double portion" at their expense. Even if I were to apply another measure, there is sufficient reason to review my judgment. Accordingly, Parcel No. ABOGETA/U-CHURE/239 shall now be distributed equally to the remaining beneficiaries of the estate of Gladys Chabari Nyai (except Miriti Chabari who has already been provided for in the judgment). For avoidance of doubt, sons and daughters of the now deceased Gladys Chabari Nyai with the exception of Miriti Chabari shall share equally.

13. In the upshot, I find merit in the application dated 28th February 2019. Accordingly, I review my judgment to the extent that **Parcel No. Abogeta/U-Chure/239** shall be shared equally amongst: (1) **Rosemary Mucece John (1.125 acres); (2) Charity Wanja (1.125 Acres); (3) Kinyua Chabari (1.125 Acres); and (3) the estate of Cecinta Kajuju (1.125 Acres). The judgment delivered on 21st January 2019 shall be accordingly amended. To avoid any future confusion, the administrators shall hold the share of the estate of Cecinta Kajuju as trustees. It is so ordered.**

14. As these proceedings involve close family members, I order that each party shall bear own costs.

Dated, signed and delivered at Milimani this 7th day of May 2020

F. GIKONYO

JUDGE

Representation: -

1. F.K.Gitonga & Co. advocates for the Applicants,

2. Charles Kariuki & Koome Associates Advocates for the Respondent.