

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 2277 OF 2011

IN THE MATTER OF THE ESTATE OF CECILIA WANGECI MWATHI (DECEASED)

PURITY WAMBUI GACHIMBI.....1ST PETITIONER/APPLICANT

VERSUS

BEATRICE NGONYO MWATHI.....2ND PETITIONER/RESPONDENT

RULING

1. An applicant who seeks a review of a judgment or order has to show to the satisfaction of the court that there has been discovery of new and important matter or evidence which was not within his knowledge or could not be produced at the time when the judgment or order to be reviewed was made, or has to show that there was mistake or error apparent on the face of the record, or that there is other sufficient reason that should entitle him to the review (**Order 45 rule 1(1) of the Civil Procedure Rules; Tokesi Mambili and Others –v- Simion Litsanga, Civil Appeal No. 90 of 2001 at Kisumu**). The application should be brought without unreasonable delay.

2. On 30th January 2017 I gave a judgment in which I distributed the estate of the deceased Cecilia Wangeci Mwathi to the beneficiaries. One of the beneficiaries was Purity Wambui Gachimbi who was an administratrix of the estate. On 25th October 2018 she filed the present application to have the judgment reviewed. Her case was that the deceased's residence was at Nikanini Farm (Plot No. 23, a portion of LR No. 19959/21) which was one of her properties, and that the property was acknowledged in the judgment but that it had not been distributed. She asked the court to find that the omission to distribute the estate was an error apparent on the face of the record which should be corrected by review. It was her request that the property be equally shared among the children of the deceased (Purity Wambui Gachimbi, Karin Muthoni Gachimbi and Angela Amani Gachimbi) and be registered in the joint names of Purity Wambui Gachimbi, Karin Muthoni Gachimbi and Beatrice Ngonyo Mwathi to hold in trust for the children.

3. The application was served on the firm of C.K. Chege & Co. Advocates for the respondent Beatrice Ngonyo Mwathi who was the co-administratrix. There was no response.

4. It is notable that the applicant, Karin Muthoni Gachimbi and Angela Amani Gachimbi were children of the deceased, and the respondent was the deceased's mother.

5. I acknowledge that, out of inadvertence, I did not distribute the deceased's residence to her beneficiaries. I, consequently, allow the application. I review the judgment delivered on 30th January 2017 by including in the estate the residence at Nikanini Farm (Plot No. 23, apartment on LR No. 19959/21) which shall be registered in the joint names of Purity Wambui Gachimbi and Beatrice Ngonyo Mwathi to hold in trust for Purity Wambui Gachimbi, Karin Muthoni Gachimbi and Angela Amani Gachimbi in equal shares.

6. The certificate of confirmation issued on 30th January 2017 shall be amended to include the foregoing distribution.

DATED and SIGNED at NAIROBI this 5TH day of FEBRUARY 2019.

A.O. MUCHELULE

JUDGE

DATED and DELIVERED at NAIROBI this 11TH day of FEBRUARY 2019.

ALI-ARONI

JUDGE