



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO 505 OF 2008

IN THE MATTER OF THE ESTATE OF M'ARIMBI M'MUTUA (DECEASED)

CYPRIAN MURORI M'ARIMI.....PETITIONER

VERSUS

FRANCIS MUTUA.....1ST PROTESTOR

ANGELICA MBERENYA M'KARIMBI.....2ND PROTESTOR

MUCHUI KARIMBI.....3RD PROTESTOR

AND

FLORENCE KAIMENYI.....INTERESTED PARTY

R U L I N G

1. This Ruling relates to the interested party's Summons dated 29th February 2019. In that application, the interested party sought an order for the review of the judgment delivered on 21st February, 2019. That judgment had distributed the deceased's entire estate as follows: -

i) Abothuguchi/Kariene/2078 (2.7095 Acres)

Florence Kananu - 0.632 Acres

Angelica Mberenya - 0.316 Acres

Julius Kinoti - 0.316 Acres

Lazaro Gitonga - 0.316 Acres

Muchui Karimbi - 0.316 Acres

Mary Kajuju - 0.316 Acres

Purity Kinyua - 0.316 Acres

Stella Mukami - 0.316 Acres

ii) Abothuguchi/ Kariene/2247 (0.4520 Acres)

Stella Mukami - 0.136 Acres

Sarah Kagwira - 0.316 Acres

2. The basis for the review is that; there is a mistake apparent on the face of the record in the distribution of the estate in that, the Court granted 0.632 Acres from L.R No. Abothuguchi/Kariene/2078 to **Florence Kananu** and left out **Florence Kaimenyi** who had a claim of 0.5

acres belonging to Francis Mutua.

3. In the judgment, this Court observed as follows: -

“...the Interested party is entitled to the share of the estate both as wife of a son of the deceased and holder of the 1st protestors interest and share.”

4. The convergence and error in the Judgment is clear. The interested party, **Florence Kaimenyi** was a purchaser of ½ an acre of the 1st Protestors share in the property whereas Florence Kananu was a wife of the deceased's son by the name **Francis Mugambi**.

5. Given that the 1st Protestor admitted to have sold his portion of the share in the estate to Florence Kaimenyi, she is entitled to the 1st Protestor's share and nothing more. Further, since the estate would not have allowed the 1st Protestor to be entitled to more than the other beneficiaries, the share to be given to the Interested Party shall not exceed that of the other beneficiaries.

6. As regards **Florence Kananu**, she will only be entitled to the share due to her late husband which, in any event, must be equal to the share of all the others.

7. In this regard, the application dated 28th February, 2019 is hereby allowed and the grant rectified as follows:-

i) Abothuguchi/Kariene/2078 (2.7095 Acres)

Florence Kananu - 0.2874 Acres

Florence Kaimenyi - 0.2874 Acres

Angerica Mberenya - 0.2874 Acres

Julius Kinoti - 0.2874 Acres

Lazaro Gitonga - 0.2874 Acres

Muchui Karimbi - 0.2874 Acres

Mary Kajuju - 0.2874 Acres

Purity Kinyua - 0.2874 Acres

Stella Mukami - 0.1229 Acres

ii) Abothuguchi/ Kariene/2247 (0.4520 Acres)

Stella Mukami - 0.1646 Acres

Sarah Kagwira - 0.2874 Acres

8. This being a Succession Cause. I order each party to bear own costs.

DATED and DELIVERED at Meru this 2nd day of May, 2019.

A. MABEYA

JUDGE