



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT CHUKA**

**SUCCESSION CAUSE NO.64B OF 2016**

**(FORMERLY MERU SUCC. CAUSE NO.319 OF 2014)**

**IN THE MATTER OF THE ESTATE OF THE LATE**

**SEBASTIAN MBAKA MUTUA alias MBAKA MUTUARUBIU (DECEASED)**

**RUCIA NKITHI SEBASTIANO.....1<sup>ST</sup> ADMINISTRATIX/APPLICANT**

**VERSUS**

**LIBERATA KAGENI MBAKA.....2<sup>ND</sup> ADMINISTRATRIX/APLICANT**

**R U L I N G**

1. The deceased in this cause died intestate on 12<sup>th</sup> October, 2000 at Chuka Hospital domiciled at Njuri. The petition for letters of administration was presented by Rusia Nkithi Sebastino, listed as the wife to the deceased. The assets listed as comprising the estate are Magumoni/Rubate/763 and Magumoni/Thuita /1892. A grant of letters of administration was issued to the petitioner on 30<sup>th</sup> December, 2013 and later confirmed on 30<sup>th</sup> June, 2014. Later Liberata Kageni Mbaka took out Summons for Revocation of Grant citing that she was a co-wife to the petitioner and the grant was revoked by this court by consent of partes on 3<sup>rd</sup> July, 2018 and a fresh grant was issued to the two widows jointly.

2. There was a protest on the mode of distribution suggested by one of the administratrixes and the matter proceeded for hearing. This court through a Judgment dated 16<sup>th</sup> January 2019 made a decision on the distribution of the estate and ordered L.R. Magumoni/Thuita/1892 measuring 7.29 acres be distributed equally among the widows and their children and that Magumoni/Thuita/763 go to Silvester Kanini who was also a beneficiary of the estate Peter Mutegi a son of the deceased was not given a share, as this court found that he had earlier benefited from 4.3 acres of land given to him by the deceased during his lifetime.

3. Rusia Nkithi Sebastiano has moved this court through summons dated 31<sup>st</sup> January, 2019 for review asking this court to move Silvester Kanini from Magumoni/Rubate/763 to a share in Magumoni/Thuita/1892. The ground for review is that none of the parties had suggested/proposed that Silvester Kanini gets a share in Magumoni/Thuita/763 and that Silvester Kanini, her daughter should live close to where she resides on Magumoni/Thuita/1892.

4. Liberata Kageni Mbaka, vide a Replying Affidavit sworn on 4<sup>th</sup> February, 2019 has opposed this application. In her contention there was no error on the face of the record to warrant a review. In her view Silvester Kanini, is married and lives with her husband at her Matrimonial home and that she has in the past harassed her in the portion of land given to her.

5. The Respondent has further contented that all beneficiaries were catered for equally and that the distribution was fair to all and it would be unjust to interfere with the Judgment.

6. This court has considered this application and the response made. The provisions of **Section 3 A and 80 of the Civil Procedure Act and Order 45 of Civil Procedure Rule** gives this court inherent power to determine matters in the interest of justice and discretion to review its orders or decree.

Order 45 of **Civil Procedure Rule** in particular applies in succession matters by dint of **Rule 63 (1) of Probate and Administration Rules** and it provides explicitly clear that a court can only review its orders on the following grounds namely:-

- i. Discovery of a new and important matter which after the exercise of due diligence was not within the knowledge of the applicant and could not be produced at the time the decree was passed or the order was made.

ii. Existence of a mistake or error apparent on the face of the record.

iii. Any other sufficient cause brought to the attention of court without unreasonable delay.

7. Going by the above provisions in the first place, there is no error pointed out on the face of the record. The applicant merely feels that her daughter should be moved from one portion to another for reasons best known to her. The reason that she needs her daughters to stay close to her flies in the face of the fact that her daughter is said to be married and staying with her husband in her matrimonial home. In any event, the parties presented their evidence in court on how they wished to have the estate distributed and this court upon evaluation of evidence and the dictates of the law rendered itself on the mode of distribution and granted each beneficiary equal share and if any of the parties in this cause felt aggrieved by the decision of this court, then the right forum was to appeal rather than coming back to this court for review.

8. The applicant has also not pointed out any discovery of a new matter that cropped up and which upon exercise of due diligence could not be brought to the attention of this court during trial. Furthermore the beneficiary (Silvester Kanini) herself has not come to court to raise any complaint or anything to do with occupation of the portion given to her by this court. The applicant has also not stated whom she wants to get the share allocated to Silvester Kanini and whom she wanted to be replaced. In determining the question of distribution, where parties disagree the court is not bound by the proposals made by the parties.

9. This court heard all the parties who turned up during trial and considered the evidence tendered and the provision of the law before tendering itself. I do not find any merit in the application dated 31<sup>st</sup> January, 2019. The same is disallowed but I will not make any order as to costs.

**Dated, signed and delivered at Chuka this 3<sup>rd</sup> day of June, 2019.**

**R.K. LIMO**

**JUDGE**

**3/6/2019**

Ruling signed, dated and delivered in the open court in presence of both parties and Mugo for Respondent.

**R.K. LIMO**

**JUDGE**

**3/6/2019**