



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KITALE

SUCCESSION CAUSE NO. 137 OF 2010

IN THE MATTER OF THE ESTATE OF THE LATE WILLIAM CHERUIYOT LELMET - (DECEASED)

BETWEEN

MIKE .K. LELEMET & OTHERS.....ADMINISTRATORS

VERSES

JULIA KIMOI CHEBIATOR & OTHERS.....OBJECTORS

RULING

1. The application by the administrators dated 25th January, 2019 is seeking to review the judgment of this court delivered on the 10th December, 2018. The same seeks to have the portion due to one RICHARD TOROITICH reduced to 2 acres instead of 3 acres.

2. It further seeks to have parcels numbers 21 and 34 at Mois bridge be reviewed and reallocated to the estate. It prays that the shares belonging to the deceased daughters measuring 10 acres be reviewed too as they stand to suffer loss compared to the other beneficiaries.

3. The application is supported by the affidavit of MIKE LELMET sworn on the even date. He has deponed that one RICHARD MASIT ought to get 1 acre instead of 7 acres and that the name should read RICHARD CHIRCHIR MASIT and not RICHARD MASIT LELMET.

4. That one PURITY LELMET given one acre in the judgment has since passed on and the same should revert to the estate just like that of LYDIA LELMET.

5. He further deponed that the aforesaid Moisbridge parcel of land do not form part of the estate and he attached some minutes of a meeting held on 16th December, 2018. He further stated that the deceased daughters namely MARGARET, ESTHER, JANET ,IRENE, JOYCE, ELSHEBA, SUSAN, PRISCA, PURITY & LYDIA, the last 2 being deceased have been discriminated against since they have been given 1 acre each out of the 600 acres.

6. JULIA KIMOI CHEBIATOR has respondent vide her replying affidavit dated 12th February, 2019 opposing the application. She said that the Mois bridge plots were available all along and that the documentation was available. She denied on behalf of the rest of the objectors that the clan meeting that took place was genuine. That the share due to RICHARD TOROITICH could as well be corrected by a normal application for rectification.

7. The parties were then ordered to file written submissions which they did and the court has perused the same and do not see any reason to reproduce them here.

The Provisions of Order 45 of the Civil Procedure Rules are in line with Rule 63 of the Probate and Succession Rules.

8. This court thus has the ability to review its decision. The court has looked at the said application and the prayers sought shall be considered to the extent that the same are “ *newly discovered after the exercise of due diligence not within the knowledge or could not be produced by him at the time when the decree was passed or other order made or on account of some mistake or error apparent on the face of the record or for any sufficient reason*” ----- (See Order 45(1) (b) of the Civil Procedure Rules.)

8. On the first issue of the daughters getting less share of the estate, I respectfully do not find the reason new and was not in the domain of the said daughters or the applicant. As admitted by the applicant this matter has taken 9 years to resolve and my take is that none of them can claim not to be in the know. At any rate this matter proceeded by way of viva voce evidence and they had all the time to ventilate their claim

before the decision they seek to review.

9. The same applies to the Moisbridge parcels or plots. The same featured in the proceedings especially before the elders and before the filing of the cause. Surely it cannot be said to be new and specifically that the same belonged to other strangers not party to the estate. Who are these 3rd parties and why haven't they filed any claim now and during the pendency of the cause. At any rate the clan meeting held as per the minutes was done way after the decision of this court.

10. The correction of the names of one RICHARD MASIT LELMET to RICHARD CHIRCHIR MASIT can always be done by an application and not a review. If he was given less acreage or more then that should be a subject of appeal and not a review for the simple reason that a review is a very small window opened to deal with straight forward matters that may not be necessary to undergo an appeal process. The fact that the applicants have touched o the share which the said Mr Masit is entitled has open a whole new frontier since it will mean touching on the shares of the rest of the beneficiaries mathematically so to speak.

11. Whether the objectors had been given some land in **Moiben Plot No. 47** in my view is not a new issue and was well within their knowledge during the hearing. That issue was not brought to the fore and dealing with it by way of a review shall prejudice other parties. The same to me appears weighty and would of necessity require adduction of evidence. Again I do not find it new evidence.

12. On the question of one RICHARD TOROITICH, his issue was not new as it clearly came during the hearing and the court pronounced itself on it.

13. Finally on the fees due to the administrators or the costs they incurred during the whole period of litigation, I find the same totally strange as this court had ordered the parties to meet their respective costs.

14. The entire application as well captured in the applicants submission is the redistribution of the estate afresh. That is water under the bridge. If any party feels aggrieved by the distribution then the best thing to do is to lodge an appeal. This court does not see any reason to review its decision for now. The issues relating to names can always be dealt with by simple application and not by way of a review where the whole landscape on distribution is being challenged through the backdoor.

15. For the above reasons, the application is disallowed. The best way to raise the issues herein is by an appeal process. Each party shall meet its respective costs.

Dated signed and delivered in open court at Kitale this 23rd July, 2019.

H K. CHEMITEI

JUDGE

23/7/19

In the presence of:-

Prof. Sifuna for the Admisntrator

Teti holding brief for Objector

Ambutsi for interested party.

Court Assistant -Kirong

Ruling read in open court.