



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERUGOYA**

**SUCCESSION CAUSE NO. 312 OF 2014**

**IN THE MATTER OF THE ESTATE OF THE LATE EMILY NDJOROGE (Deceased)**

**JEREMIAH KAMAU NJOROGE.....APPLICANT/PETITIONER**

**RULING**

1. This matter relates to the estate of Emily Nduta Njoroge, deceased.

2. The applicant has filed an application dated 30/11/2018 seeking review of the confirmation of grant issued on 09/11/2013. That after confirmation, he discovered that one property was erroneously left out being **LOCK-UP 2 KIMBIMBI**. He proposed that the whole share of the same be given to Sarah Wairimu Mwangi. That the other properties remain as distributed earlier.

The application is not opposed.

**Grounds for applying for review**

Review can only be allowed under certain circumstances. It is not in all cases that a party is allowed to apply for review. The grounds are:

**i) Discovery of new and important matter of evidence which, after 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**

**ii) Mistake or error apparent on the face of the record**

**iii) Any other sufficient reason which may make the court to review its order.**

Application for review of decree or order is made under **Section 80 Civil Procedure Act** and **Order 45 Civil procedure Rules. Order 45 rule 1 Civil Procedure Rules** provides:-

3. This is being discovery of new and important matter of evidence that was not within the knowledge of the applicant at the time of making the orders, the application for review can be considered.

4. Review is available in succession matters as it is one of the orders in the Civil Procedure Act which is applicable.

**Rule 63 of the Probate & Administration Rules** provides:-

***“Save as is in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, XI, XV, XVIII, XXV, XLIV and XLIX, together with the High Court (Practice and Procedure) Rules, shall apply so far as relevant to proceedings under these Rules.”***

**Order XL IV** is now **Order 45** in the Civil Procedure Rules 2010.

5. The court will order review where a party has after the order was issued discovered new or important matter or evidence or mistake or error apparent on the face of the record or for any other sufficient reason. The discovery must be an issue of fact or evidence. The applicant claims that he has since discovered property of the deceased which was not included in the grant. This is a matter of evidence and since this matter relates to the estate of the deceased it would be expedient to include the property in the grant of administration of her estate. The application has merits. I allow it as prayed.

6. The grant confirmed on 9/11/2013 is reviewed and set aside. A fresh grant be issued to include Lock-up-2-Kimbimbi on the schedule of the properties of the deceased.

**Dated at Kerugoya this 18<sup>th</sup> day of July 2019.**

**L. W. GITARI**

**JUDGE**