



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**SUCCESSION CAUSE NO. 43 OF 1997**

**ESTATE OF THE LATE SAMUEL M'IBIRI M'BAGIRI**

**JACOB MUTUMA M'IBIRI.....PETITIONER**

**VERSUS**

**JOEL KAURA SAMUEL**

**JANET KIGETU MUTHAMIA**

**JAMES THURANIRA**

**NAOMI KANANA MUTUNGI.....OBJECTORS**

**ZIPPORAH KINYA KANGWANA**

**SALOME NDURU S. MUGAMBI**

**RULING**

The applicant 1<sup>st</sup> Protestor Joel Kaura M'Ibiri filed an application dated 9<sup>th</sup> April 2019 seeking that the court reviews the order made on 21<sup>st</sup> January 2019 and direct that LR. No. Ntima/Igoki/492 be shared out between Jacob Mutuma M'Ibiri on the one hand and the surviving children of 2 of the deceased daughters namely:-

- i. Jennifer Mwari Murugu
- ii. Zipporah Kinya Kagwana who were inadvertently left out during the distribution.

The applicant also sought that pending the hearing and determination of this application the court do order a stay of execution of the ruling and order made on 21<sup>st</sup> January 2019. He also sought for cost of application.

The application was supported by the grounds on the face of application and the supporting affidavit of Joel Kaura M'Ibiri sworn 19<sup>th</sup> April 2019.

The Application was opposed by the replying affidavit of Jacob Mutuma M'Ibiri sworn 10<sup>th</sup> July 2019.

This application was canvassed by way of written submissions. The applicant in his submissions said that there was an error apparent on the face of the record in respect of beneficiaries of the estate of the deceased who were left out during the distribution of the estate. The applicant claimed that in the mode of distribution dated May 2018 he had listed all the daughters of the deceased and where such daughters had passed on they indicated their children who were to benefit on behalf of their mothers. He said that he had proposed that Joseph Mwirigi and Francis Kagwana get a share out of LR. Ntima/Igoki/492 on behalf of Jennifer Mwari Murugu and zipporah Kinya Kagwana respectively who were their mothers.

The applicant further argued that LR. Ntima/igoki/492 is big enough to accommodate the respondent and the said 2 daughters since it is 2.59 acres and it is also within the Meru Municipality and its networth is more than all the parcels of the deceased combined. The applicant therefore urged the court to review the distribution to accommodate the surviving children of the deceased daughters to maintain harmony amongst the beneficiaries.

The applicant urged the court to exercise its unfettered discretion under section 80 of the Civil Procedure Act and issue the orders sought.

The Petitioner/Respondent on the other hand submitted that the application seeks to alter the judgment of this court by requiring the court to sit as an appellate court on its own judgment. It was argued that the applicant had not provided identification documents for Jeniifer Mwari Murugu and Zipporah Kinya Kagwana to indicate that they are beneficiaries of the estate or that they are alive. The Respondent argued that the 2 persons that are mentioned by the Applicant did not come before the court to ascertain their interest for the estate and it is suspicious for the applicant to direct the court to award 2 non-existing beneficiaries land which was issued to the Respondent. The Respondent submitted that the court functus officio as regards the distribution and that the application should be struck out with costs.

Having considered the application, the grounds and the supporting affidavit as well as the replying affidavit by the Respondent and submissions thereto. I do find that this court cannot review its orders made on 21<sup>st</sup> January 2019 for the reasons that the issue of valuation of Ntima/Igoki/492 did not arise during viva voce evidence; the applicant has not informed the court what the value of the said land is and has not attached any valuation report to his application.

The Applicant has also alluded to the children his deceased sisters but he has not given an explanation why the said children were not involved in the course during hearing and whether they are minors or adults. The applicant has not shown that he has consent to speak on behalf of the grandchildren of the deceased.

This court therefore finds that if the applicant is not satisfied with the manner in which this court distributed the estate he should appeal against the order delivered on 21<sup>st</sup> January 2019. The application is dismissed with no orders as to cost.

**HON A. ONG'INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED IN COURT ON**

**14TH DAY OF NOVEMBER 2019.**

**In the presence of :**

C/A: Kinoti :-

Mutuma Advocate for Applicant

Mr Kaumbi Advocate for Respondent.

**HON A. ONG'INJO**

**JUDGE**