



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

SUCCESSION CAUSE NO. 437 OF 2014

IN THE MATTER OF THE ESTATE OF KIRO GATIMU (DECEASED)

AND

EDDAH NYAKIO KATHUNI.....APPLICANT

VERSUS

CECILY WAMBUI GATIMU.....RESPONDENT

RULING

The applicant Eddah Nyakio Kathuni has filed an application dated 22/02/2018 seeking review of the confirmation of grant issued on 15/12/2016. That she was registered jointly with the respondent yet she is an adult who can be registered on her own.

According to the respondent, the applicant was present in court when the grant was confirmed and she consented to the said distribution. That the applicant has a baby son called Wachania Nyakio and if the court is inclined to remove her name, she humbly request that the said portion be registered jointly between the applicant and the minor child.

Grounds for applying for review

Review can only be allowed under certain circumstances. It is not in all cases that you are 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 relates to issues of facts which may arise from the evidence. The rule talks of discovery of new and important matter or evidence or mistake or error apparent on the face of the record or for any other sufficient reason. The discovery referred to does not in my view relate to issues of law but must relate to facts and that is why the rule refer to discovery of facts as opposed to law.

Rule 63 Probate and Administration rules provides for application of Civil Procedure Rule which includes Order **XLIV** (now order 45 Civil Procedure Rules 2010). Furthermore rule 73 of the Probate and Administration Rules provides:

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

The applicant is an adult who has capacity to have the land registered in her name. There is no dispute that she was entitled to a share of the estate of the deceased. There is therefore no reason why her share should not be registered in her name. It has also come out from the evidence that the applicant has a child who was not mentioned in the proceedings. It is in the best interest of the child that the child be catered for. This would be done if the applicant is given her portion. The applicant Eddah Nyakio Kathuni was named as a beneficiary and since she is an adult, there is no reason why she should not get her share independently without being tied to Cecily Wambui the respondent. I find that the application has merits. The grant will be reviewed to have the share of the applicant listed in her name. I make no orders as to costs.

Dated at Kerugoya this 11th Day of October 2018.

L. W. GITARI

JUDGE