

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1751 OF 1993

IN THE MATTER OF THE ESTATE OF JAMES CHEGE NDWARU (DECEASED)

JAMES WAINAINA CHEGE.....2ND ADMINISTRATOR / APPLICANT

JANE WANJIRU CHEGE 3RD ADMINISTRATOR / APPLICANT

GEORGE MBUGUA CHEGE 4TH ADMINISTRATOR / APPLICANT

ESTHER RUGURU CHEGE7TH RESPONDENT

VERSUS

MARY WACHUKA CHEGE 1ST ADMINISTRATOR/RESPONDENT

RULING

1. On 9th November 2017 the court rendered a judgment in which it distributed the estate of the deceased James Chege Ndwaru to his beneficiaries. James Wainaina Chege (2nd administrator), George Mbugua Chege (4th administrator) and the respondent Mary Wachuka Chege (1st administrator) were some of the children of the deceased. They were the administrators of his estate. The family was not able to agree on the distribution of the estate. Hence the determination that was made by the court.
2. The applicants filed the present application on 29th January 2018 seeking to have the estate distributed, something that the respondent does not want as she was satisfied with the decision of the court.
3. What the parties agree on, however, is the error on the part of the court (in paragraph 8 of the judgment) when it made reference to Dagoretti/Riruta/54. What was meant was Dagoretti/Riruta/548, as shown in the rest of the judgment. The error was a typographical one and is hereby corrected to reflect the correct land parcel, Dagoretti/Riruta/548.
4. Otherwise, under **Order 45 rule 1** of the **Civil Procedure Rules** review may only be granted when there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant, or could not be produced by him at the time when the decree was passed or the order made; or on account of some mistake or error apparent on the face of the record; or for any other sufficient reason. The application for review has to be brought without unreasonable delay (**Francis Origo & Another –v- Jacob Kumali Mungala, Civil Appeal No. 149 of 2001 [2005]2 KLR 307**).
5. The applicants were given the opportunity to place on record all the evidence which was, along with that of the respondent, considered before the court reached its determination on how the estate should be shared. If the applicants now are not satisfied with the sharing, and cannot persuade the respondent to come along with their new proposal, they have to appeal the judgment. There is no new matter or evidence to support the application for review.
6. The applicants had the opportunity to inform the court that about who had settled where on the various plots and portions. They had opportunity to inform the court who had developed which portion. They had the opportunity to indicate the values of the respective portions. The applicants are simply restating their previous positions and submissions regarding the mode of distribution that they desire. The court considered all these.
7. I will allow the application only to the extent that paragraph 8 of the judgment shall be corrected so that Dagoretti/Riruta/54 shall read Dagoretti/Riruta/548. I make no order as to costs.

DATED and SIGNED at NAIROBI this 1ST day of OCTOBER 2018

A.O. MUCHELULE

JUDGE