



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Geoffrey Mukunu Mutugi alias Mukunu Mutugi (Succession Cause 103 of 2014) [2025] KEHC 1070 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1070 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
SUCCESSION CAUSE 103 OF 2014  
EM MURIITHI, J  
FEBRUARY 27, 2025**

**IN THE MATTER OF THE ESTATE OF GEOFFREY  
MUKUNU MUTUGI ALIAS MUKUNU MUTUGI**

**BETWEEN**

**MARGARET MUTHONI MUKUNU ..... PETITIONER**

**AND**

**FLORENCE WANGUI MUKUNU ..... PROTESTOR**

**RULING**

1. The applicants filed Summons dated 16<sup>th</sup> May, 2023 seeking the following orders:
  1. Spent.
  2. Spent.
  3. Spent.
  4. That this honourable court do (partly) review the judgment and/or the orders of 13<sup>th</sup> November, 2019 and issue an amended certificate of grant as hereunder:

Schedule description of property name shares Mwerua/Kagio/1495 Florence Wangui Mukunus 8 ½ acres Margaret Muthoni Mukunu 1 ½ Acres Plot No. 33B-Kagio Florence Wangui Mukunu Equally

(That the developed 2 share do devolve to Florence Wangui Mukunu whereas the balance of the undeveloped 2 share do devolve to Margaret Muthoni Mukunu).
5. That the costs be in the cause.



2. The Application is founded upon grounds on the face of the application and the affidavit of Florence Wangui Mukunu setting out the facts relied on.
3. The respondent filed a Relying Affidavit dated 12<sup>th</sup> February, 2023 and averred that the respondent deposes that the Judgement has no arithmetical errors and/or mistakes in the subdivision of the deceased's freehold land and that the Protestor/Applicant had been in knowledge of the existence of the Judgement of 13/09/2019 for 4 years as at the time of filing this Application and had sat pretty without moving the court and further that there is no discovery of new facts and/or matters to warrant review.
4. The Court has considered the application for review. The applicant deposes that from the judgment delivered on 13<sup>th</sup> November, 2019 there is an arithmetical and/or mistake in sub-division of the deceased's freehold land wherein the court distributed a total of 8 acres to the applicant/protestor instead of 9 ½ acres and 11 acres to the respondent instead of 9 ½ acres which is contrary to the proposal made by the parties and/or the agreement thereon. That from the respondent's proposal she sought to distribute the 9 ½ acres of the aforesaid freehold land as captured in paragraph 5 above to herself and 9 ½ acres to the applicant through the Summons for Confirmation of Grant dated 29<sup>th</sup> May, 2015. That from the affidavit of protest sworn by the protestor/applicant on 15<sup>th</sup> June, 2015 whose details are well captured in paragraph 3 of the affidavit sworn on 16<sup>th</sup> May, 2023 in support of the Summons dated 16<sup>th</sup> May, 2023 the protestor/applicant distributed 9 ½ acres of the freehold land to herself and the balance of 9 ½ acres to the petitioner/respondent making a total of 19 acres. It is contended that therefore, the aforesaid orders of 13<sup>th</sup> November, 2019 with regard to title number Mwerua/Kagio/1495 be partly reviewed to read as follows:
 

Mwerua Kagio 1495

Florence Wangui Mukunu -8 ½ acres

Margaret Muthoni Mukunu -1 ½ acres.
5. The applicant submits that the review should include that ½ of the developed share of Plot No. 33B-Kagio should devolve to Florence Wangui Mukunu whereas the balance of undeveloped 4 share do devolve to Margaret Muthoni Mukunu.
6. The respondent deposes that the Judgement has no arithmetical errors and/or mistakes in the subdivision of the deceased's freehold land. However, they have not attached any evidence to prove their claim. Further, that during the hearing of this suit on 26<sup>th</sup> July, 2018 the parties agreed that there was no dispute in sharing of the freehold land to the 2 widows in equal shares of 9 ½ acres.
7. The Court considers that the applicant's proposed mode of review should be adopted as it is fair and will resolve the error in distribution of the deceased's estate among the beneficiaries.

### **Unreasonable delay**

8. It should also be noted that the application herein was made four years after the impugned orders were made. It is trite law that an application for review should be made without unreasonable delay. The applicant deposed that he had lodged an appeal of the judgment dated 27<sup>th</sup> November, 2019. However, he chose not to file this application for review to save time and mitigate costs. The respondent deposes that protestor/Applicant had been in knowledge of the existence of the Judgement of 13/09/2019 for 4 years and refused to apply for review or comply with the orders of the court. He filed this application for review on 16<sup>th</sup> May, 2023.



9. This Court respectfully agrees with the court *in re Estate of Simoto Omwenje Isaka (Deceased)* [2020] eKLR, where Musyoka J. held:

The applicant, in his submissions and the affidavit in support of the application, has not addressed the delay in filing the application for review, let alone the reasons for it. The delay is, therefore, not explained. It is my view that a delay of three years is gross and unreasonable, and, therefore, the orders sought in the instant application cannot be available for granting.

10. In the present case, however, the delay for four years was explained and as the object of the review is to rectify actual errors the court shall exercise discretion and grant the review despite the delay.

### **Orders**

11. Accordingly, for the reasons set out above, the application by Summons dated 16<sup>th</sup> May, 2023 is granted as prayed.
12. There shall be no order as to costs.

Order accordingly.

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Ngigi for Protestor/Applicant

Ms. Gwaro for the Mr. Otuke for the Petitioner/ Respondent.

