



REPUBLIC OF KENYA



**In re Estate of Kimani Njora (Deceased) (Succession Cause
147 of 2006) [2025] KEHC 1340 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1340 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
SUCCESSION CAUSE 147 OF 2006**

RK LIMO, J

FEBRUARY 27, 2025

BETWEEN

TERESIA WACERA KIMANI APPLICANT

AND

FRANCIS KIHARA KIMANI RESPONDENT

RULING

1. Teresia Wacera Kimani, the applicant herein has moved this court vide Chamber Summons dated 29th May, 2023 for the following orders namely;-
 - a. That this honourable court be pleased to review and set aside the judgment delivered on 10/3/2023.
 - b. That costs be provided for.
2. The applicant has listed the following grounds for the prayers sought;-
 - i. That there is an apparent error on the face of the record.
 - ii. That Francis Kihara Kimani does reside on the suit land (sic) instead he resides in Sinyerere with the rest of the beneficiaries.
 - iii. That Parcel No.Kamara/Mau Summit/Block6/196 is to be shared equally between Francis Kihara Kimani And Samuel Kariuki Kimani.
 - iv. That the said error is material and manifests on the face of judgment and will result in miscarriage of justice to beneficiaries left out.
 - v. That the daughters who were initially to inherit the same surrendered the same to their two brothers since their portion was sold (sic).



- vi. That this application has been made in good faith and with expedition.
- vii. That this court has unfettered discretion and power to allow the prayers sought.
3. The applicant has supported her application with an affidavit sworn on 29/5/2023.
4. The deponent has majorly reiterated the above grounds and added the date of death of the deceased was erroneously indicated in the judgment as 30/6/2006 instead of the correct date of 31/10/2001.
5. In her written submissions through counsel, the applicant has invoked the provisions of Order 45 Rule(1) of Civil Procedure Rules which provision relates to review of order or decree passed by a court.
6. The applicant submits that she has demonstrated that there is an apparent mistake or error on the face of judgment. She submits that her application for review is grounded on the error or mistake which she claims is apparent of the judgment. She relies on the case of Paul Mwaniki -vs- National Hospital Insurance Fund Board of Management (2020)eKLR where the court found that a review of decision to correct an error should be done where the error is evident and does require long debate or reasoning.
7. She submits that the Hon. Judge erred in his judgment under paragraph 7 because he omitted a consent to confirmation of grant which in her view indicated that parcel No.Kamara/Mau Summit/Block 6/196 was to be shared equally between Francis Kihara Kimani and Samuel Kariuki Kimani.
8. She submits that she has brought this application without delay adding that unless the judgment is reviewed, the respondent would be unfairly enriched.
9. The respondent has opposed this application through a replying affidavit sworn on 11/9/2023 and written submissions through counsel dated 29/1/2024.
10. The respondent avers that the decision made by Justice Kimaru was based on evidence tendered and not an error adding that Joseph Mwangi Kimani and Samwel Kariuki had sold 5 acres comprising Molo South/Ikumbi Block 9/738 which was considered as a benefit.
11. The respondent avers that the error on the date of death can be corrected but insists that the respondent should appeal if she was dissatisfied with the judgment of the court.
12. In his written submissions through learned counsel Walter Wanyonyi Advocate, the respondent submits that parties were heard and everyone had a chance of tendering evidence. He adds that parties gave respective proposals on the mode of distribution of the estate and the court rendered itself.
13. This court has considered this application and the grounds advanced. I have also considered the opposition and rival submissions.
14. The applicant has invoked the revisionary power under Order 45(1) of the Civil Procedure Rules which I find are applicable pursuant to purposive import of R.63 of P&A Rules. This court besides the rules has inherent power under Rule 49 as read with Rule 73 of P&A Rules to make any such order as it meets the ends of justice.
15. The issue for determination is whether there is any merit in the applicant's contention that there was an error in the face of the judgment by Hon. Kimaru J (as he then was) in the judgment delivered on his behalf on 10/3/2023 by Mrima J.
16. The applicant states that there is an error apparent in paragraph 7 of the judgment. That it went against a consent reached by parties. But a perusal of the file reveals that, that is far from the case. This is because paragraph 7 of the judgment indicates that the decision by the good Judge was based on a decisional finding based on the evidence tendered. The evidence tendered indicated that Joseph Mwangi Kimani



had sold part of the estate and benefited from the proceeds of sale. The Judge was clear in his mind when he gave the respondent herein Kamara/Mau Summit/9/196. If the applicant or anyone for that matter was aggrieved by that definite finding, then the only option open was to prefer an appeal.

17. Secondly the Judge fixed the matter for hearing because the parties could not agree. The claim that there was a consensus by the beneficiaries on the mode of distribution is misleading and not backed by the proceedings before me.
18. However, this court finds that the only valid issue raised by the applicant is the date of death of the deceased herein. The date captured in judgment which was 30/6/2006 is certainly incorrect. The correct date is 31/10/2001 as clearly captured in the pleadings. This court to that extent will revise the date of death of the deceased from 30/6/2006 to 31/10/2001. The substantive prayer for reviewing paragraph 7 of the judgment is unsustainable as I have found out. The same is dismissed. I will make no order as to costs so each party to bear own costs.

RULING DATED, SIGNED AND DELIVERED, AT KITALE THIS 27TH DAY OF FEBRUARY, 2025.

HON. JUSTICE R.K.LIMO

KITALE HIGH COURT

Ruling delivered in open court

In the absence of the parties

