



REPUBLIC OF KENYA



In re Estate of Cypriano M’rimberia M’migwi alias Rimberia Migwi alias M’rimberia M’migui (Deceased) (Succession Cause 489 of 2014) [2024] KEHC 340 (KLR) (25 January 2024) (Ruling)

Neutral citation: [2024] KEHC 340 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
SUCCESSION CAUSE 489 OF 2014**

TW CHERERE, J

JANUARY 25, 2024

**IN THE MATTER OF CYPRIANO M’RIMBERIA M’MIGWI ALIAS
RIMBERIA MIGWI ALIAS M’RIMBERIA M’MIGUI (DECEASED)**

AND

**IN THE MATTER OF REDISTRIBUTION OF THE SHARE
FOR BENJAMIN NJOGU MBERIA (DECEASED BENEFICIARY)**

IN THE MATTER OF

AMOS MWIRIGI KITHARA APPLICANT

RULING

1. The Certificate of Confirmation in this cause was issued on 20th November, 2015 distributing the estate of the deceased comprised in LR. Abothuguchi/U-kaongo/1265 in equal shares to Benjamin Njogu Mberia and Amos Mwirigi Kithara.
2. Subsequently, Benjamin Njogu Mberia died and by an order dated 26th April, 2023, this court directed that the Certificate of Confirmation issued on 20th November, 2015 be rectified to the extent that the ½ share for Benjamin Njogu Mberia be transmitted to his estate. This decision was informed by the fact that Amos Mwirigi Kithara was survived by Juliet Muthoni Mberia, Rose Kendi Mberia and Ella Wanjiru Mberia.
3. On 26th April, 2023, a Rectified Certificate of Grant in terms of the orders dated 26th April, 2023 was issued distributing. Abothuguchi/U-kaongo/1265 in equal shares to the estate of Benjamin Njogu Mberia and Amos Mwirigi Kithara.
4. By summons dated 15th November, 2023, Applicant seeks review of the orders distributing. Abothuguchi/U-kaongo/1265 in equal shares to the estate of Benjamin Njogu Mberia and Amos Mwirigi Kithara to the extent that the estate of Benjamin Njogu Mberia be substituted with the name of Rose Kendi Mberia one of the three daughters of the deceased.



5. I have considered the summons in the light of the court record and the supporting affidavit.
6. The law governing review of orders is anchored under Section 74 of the *Law of Succession Act* and Section 80 of the *Civil Procedure Act* and Order 45 (1) of the *Civil Procedure Rules*. Under Order 45(1) of the Rules, a party seeking review must prove that the application is filed without unreasonable delay; discovery of new or important matter or evidence which after the 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; or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. This position was emphasized in the case of *In re Estate of Macro Tindi (Deceased)* [2018] eKLR.
7. Applicant has neither alleged nor demonstrated discovery of new or important matter or evidence which after the 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; or on account of some mistake or error apparent on the face of the record or for any other sufficient reason that would warrant the transmission of the share for Benjamin Njogu Mberia to one of his three daughters to the exclusion of the other two.
8. Be as it may, this estate herein belongs to Cypriano M'Rimberia M'Migwi alias Rimberia Migwi Alias M'Rimberia M'Migwi (Deceased) and not to Benjamin Njogu Mberia and an invitation to distribute his share to one of his three daughters is therefore untenable and it is declined.
9. The summons dated summons dated 15th November, 2023 is without merit and it is dismissed. The beneficiaries of Benjamin Njogu Mberia are at liberty to file a cause for the distribution of his estate.

DATED AT MERU 25TH DAY OF JANUARY 2024.

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

For Applicant - Mr. Wachira for Kipkenda & Co. Advocates

