



REPUBLIC OF KENYA



In re Estate of Edward Epeni Oracho (Deceased) (Succession Cause 417 of 1990) [2023] KEHC 2695 (KLR) (24 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2695 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 417 OF 1990**

WM MUSYOKA, J

MARCH 24, 2023

**THE MATTER OF THE ESTATE OF EDWARD EPENI ORACHO
(DECEASED)**

RULING

1. On November 29, 2019, I delivered a ruling, wherein I appointed John Emonyi Ateko as administrator, to act alongside the prevailing administratrix, Zaida Andaye Eben. I thereafter directed that all the other survivors of the deceased and beneficiaries of the estate, who had not been involved previously, be served with the revocation application dated October 26, 2018, before the court could interfere with the confirmation orders of September 24, 2011.
2. Only one survivor, a daughter, Ruth Khamati Nyangasi, was availed in court, on September 15, 2021. In the end, I was involved on February 22, 2022, that the rest of the beneficiaries were not able to attend court.
3. However, a number of affidavits have been filed by individuals who say that they are survivors of the deceased, and who support the revocation application dated October 26, 2018. They explain that they were unable to attend court for a variety of reasons. They are Jescah Kheyeche Omonyo, Elizabeth Ayuma Nyando, Evarline Jisikah Omonyo and Nahashon Khamati Epeni. All their affidavits were sworn on May 24, 2022. The deponents of these affidavits only represent a section of all the beneficiaries.
4. Anyhow, I have a critical mass of beneficiaries of the estate, who were not involved when the estate was being distributed on September 24, 2011. The administration of an intestate estate must be as democratic as possible, and should carry everyone who has a beneficial interest in the estate. At the distribution, on September 24, 2011, only the widows attended court, while under Part V surviving spouses are only entitled to a life interest in the estate at distribution, with the ultimate destination being to the children. Secondly, the estate was devolved exclusively to the sons, to the exclusion of the daughters.



5. The final orders are that I shall retain the administrators that I appointed on November 29, 2019. However, I shall set aside, as I hereby do, the distribution that was ordered on September 24, 2011. The administrators appointed on November 29, 2019 shall apply for a fresh distribution of the estate, in which process they shall strictly comply with the proviso to section 71(2) of the *Law of Succession Act*, Cap 160, Laws of Kenya, and Rule 40(4)(6)(8) of the *Probate and Administration Rules*.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 24th DAY OF March. 2023

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Mr. Osango, instructed by Osango & Company, Advocates for John Ateko.

Mr. Mango, instructed by DSG Mango & Company, Advocates for John Benson Indimuli.

Zaida Andaye Eben, administratrix, in person.

