



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Jepherson Mwikambi Mwazo (Deceased) (Succession Cause 3 of 2018) [2023] KEHC 3630 (KLR) (25 April 2023) (Judgment)

Neutral citation: [2023] KEHC 3630 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
SUCCESSION CAUSE 3 OF 2018
SM GITHINJI, J
APRIL 25, 2023
IN THE MATTER OF THE ESTTE OF JEPHERSON MWIKAMBI
MWAZO (DECEASED)**

JUDGMENT

- 1 This matter relates to the estate of Jepherson Mwikambi Mwazo who died on December 6, 2010 domiciled in Kipini.
- 2 The petitioners Lydia Daudi Mwanjewe and Joshua Jepherson Mwazo the widow and son of the deceased respectively, applied for letters of administration which were granted on April 4, 2018. The estate was survived by the following dependants;
 - a. Lydia Daudi Mwanjewe - Widow
 - b. Joshua Jepherson Mwazo - Son
 - c. Mary Jepherson Mwazo - Daughter
 - d. Joseph Chrispine Mwazo - Son
- 3 The asset of the estate of the deceased is land parcel No Kipini/Mapunga Kilelengwani No 878 measuring approximately 5.9 Ha. The liability of the estate is 4 acres purchased from the said land by one Peter Mungai Njuguna.
- 4 The beneficiaries of the estate of Jepherson Mwikambi Mwazo (deceased) were directed to file a proposed mode of distribution of the estate. The said proposal dated October 18, 2021 proposes that the total amount of acreage in plot no 878 Tana River which is 15 acres be divided as follows;
 1. Lydia Daudi Mwanjewe – 3 acres
 2. Joshua Jepherson Mwazo – 4 acres
 3. Mary Jepherson Mwazo - 4 acres



4. Chrispine Mwamburi Jepherson -4 acres
- 5 From the proposed mode of distribution, I note that one Paul Mungai Njuguna is not provided for. The court on November 29, 2021 made orders that the said Peter Mungai Njuguna's purchase of 4 acres as per the agreement executed on September 4, 2009 is not disputed. The four acres of the said parcel of land should go to him as per the agreement.

In this case, Section 35(1) (a) & (b) of the Act applies: It provides: -

- ' (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to
- (a) The personal and household effects of the deceased absolutely; and
 - (b) A life interest in the whole residue of the net intestate estate: Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.'
- 6 I have taken into account the proposed mode of distribution of the estate by the beneficiaries who have appended their signatures thereto. In my view, the same was agreed by consensus. The estate comprises of 5.9 Ha which translate to 14.6 acres. I shall thus proceed to make the following orders;
- 1. That 4 acres purchased by Peter Mungai Njuguna as per the agreement executed on September 4, 2009 be and are hereby granted to him.
 - 2. The remainder of the estate which is 10.6 acres be distributed amongst the beneficiaries as hereunder;
 - a. Lydia Daudi Mwanjewe – 2 acres
 - b. Joshua Jepherson Mwazo- 2.86 acres
 - c. Mary Jepherson Mwazo- 2.86
 - d. Chrispine Mwamburi Jepherson -2.86 acres.

- 8 In the above distribution, I have considered the widow's wishes from the proposed mode of distribution that the children have more acreage than her.

**JUDGMENT FOR GARSEN READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI
THIS 25TH DAY OF APRIL, 2023.**

S.M. GITHINJI

JUDGE

In the Presence of; -

Mr Komora for the Objector

Petitioners are in person and are absent

