



REPUBLIC OF KENYA



**In re Estate of Nicholas Ochieng Onyony (Deceased) (Probate & Administration
E001 of 2022) [2023] KEHC 21139 (KLR) (31 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21139 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
PROBATE & ADMINISTRATION E001 OF 2022**

KW KIARIE, J

JULY 31, 2023

IN THE MATTER OF THE ESTATE OF NICHOLAS OCHIENG ONYONY (DECEASED)

BETWEEN

CYPRIAN ONYONY OCHIENG 1ST APPLICANT

POLYCUP OBADO OCHIENG 2ND APPLICANT

PAMELA ANYANGO OCHIENG 3RD APPLICANT

AND

JUSTINE ANYANGO OCHIENG 1ST OBJECTOR

KENNETH OMUNDO OCHIENG 2ND OBJECTOR

BONFACE OMONDI OCHIENG 3RD OBJECTOR

SALOME ADHIAMBO OCHIENG NELSEN 4TH OBJECTOR

RULING

1. The parties herein have agreed on distribution of the estate of Nicholas Ochieng Onyony except on three properties. These are Kamagambo/Kabuoro/2184, Gem/Kanyanjwa/925 and funds held in account number xxxx domiciled at the Kenya Commercial Bank.
2. The applicants are seeking the following orders:
 - a. That the grant of letters of Administration intestate made to Cyprian Onyony Ochieng, Pollycup Obado Ochieng, Justine Anyango Ochieng and Kenneth Omundo Ochieng in this matter on 14/12/2022 be confirmed in terms of the proposed mode of distribution.
 - b. That the costs of this application be in the cause.
3. Their application is premised on the following grounds:



- a. That the beneficiaries and persons entitled to partake of the estate of the deceased have been identified.
 - b. That grant of Letters of Administration was issued in the matter on 14th December, 2022.
 - c. While six (6) months have not lapsed, this honorable court adopted the consent of the parties dated 26/9/2022 on November 14, 2022 allowing for the filing of summons for confirmation of grant before the lapse of the period.
4. The objectors opposed the proposal and gave their reasons that will be captured in the body of the ruling.
 5. The deceased herein died intestate and was in a monogamous marriage. His widow later passed on and at the time of the distribution she was deceased. The distribution of the estate is therefore guided by the provisions of section 38 of the *Law of Succession Act*. It provides:

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.
 6. It has been argued Pollycup Obado Ochieng is best suited to inherit Kamagambo/Kabuoro/2184 for he has no other home. This is property measuring 0.17 ha. (0.42) acres. It was contended that his home is on this parcel of land and that he does not have the money to erect a new one. On the other hand, Kenneth Omundo is said to have inherited Gem/Kanyanjwa/984 measuring 0.44ha (1.08) acre and if they share Kamagambo/Kabuoro/2184, he will have undue advantage.
 7. The counter argument on this property is that it ought to be shared between Pollycup Obado Ochieng Kenneth Omundo. The reasons advanced for this argument is that the two have benefited from other property.
 8. I am not persuaded therefore that Pollycup Obado Ochieng ought to be the sole beneficiary of that property. I make an order that Kamagambo/Kabuoro/2184 be inherited by Pollycup Obado Ochieng.
 9. Gem/Kanyanjwa/925 is a land parcel measuring 1.25 ha. (3.08) acres. The proposal by the applicants is that it ought to be distributed equally between Justine Anyango, Pamela Anyango and Pollycup Obado Ochieng. The objectors' proposal is that it ought to be distributed to Justine Anyango and Pamela Anyango. The property measures 2.51ha (6.20) acres.
 10. The applicants have contended that the other parcels Pollycup is benefiting from are too small. The objectors have argued that Pollycup will benefit from other three parcels while Justine Anyango and Pamela Anyango will only get a portion of this parcel.
 11. I agree it will amount to unfair treatment of these two ladies, if Pollycup is to share with them for has already benefitted from other parcels. They equally have a right to inherit from their father's estate. I therefore make an order that land parcel number Gem/Kanyanjwa/925 will be shared equally between Justine Anyango and Pamela Anyango. Section 38 does not envisage a situation where one is discriminated against for being a female.
 12. No evidence was adduced in respect of account number xxxx domiciled at the Kenya Commercial Bank that it belonged to the deceased herein. Indeed what came out in evidence was that it was in their mother's name. The estate in issue is in respect of their father. I have no basis therefore to make an order regarding it.
 13. This being a family dispute, each party will bear own costs.



DELIVERED AND SIGNED AT HOMA BAY THIS 31ST DAY OF JULY, 2023.

KIARIE WAWERU KIARIE

JUDGE

