

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

PROBATE & ADMINISTRATION NO.748 OF 2015

IN THE MATTER OF THE ESTATE OF:

PASKALIA NYAMWANDA, JANE ANYANGO & CATHORINA MINYERE.....DECEASED

BETWEEN

JOYCE ADHIAMBO & ANOTHER.....APPLICANT

AND

CLARICE AWINO OWINO.....OBJECTOR

RULING

1. After I delivered my ruling in this matter dated 14th day of July, 2021, it was brought to my attention that there was an error apparent on record, without saying as much.
2. Upon my perusal of the record, I realized that the estate of John Ogola Owino had been introduced in this matter. This therefore led the court astray in assuming that the estate of the said John Ogola Owino was part of what was up for distribution.
3. My perusal of the record with these information in mind, discloses a very muddled record. Ordinarily the expectation is to have only one estate dealt with in each file to avoid confusion. Since the damage is already done, I will do the best I can in the circumstances and address the distribution of the estates of Paskalia Nyamwanda, Jane Anyango & Cathorina Minyere.
4. The summons for confirmation dated 5th November, 2018 has given a history of how John Ogolla Owino came to be registered as a co-owner with the applicant's parents. This contention has not been denied. More importantly, the applicant has provided for the representative of John Ogolla Owino's estate namely; Clarince Awino Owino, the fact that she has not been appointed a legal representative of the said Owino, notwithstanding.
5. The proposal by Clarince Awino Owino that she inherits 7.0 hectares is not supported by facts. The fact that she is a widow will not be a factor for consideration in distribution. The proposal by the applicant is close to what the evidence on record would support. The applicant being entitled to inherit from Paskalia Nyamwanda, Jane Anyango & Cathorina Minyere, her share of the estate is 3 times that of the objector. The entire estate is 9.78 ha. This divided by 4 is equal to 2.445 ha. This is what the applicant has proposed for the objector. Three shares of the same is 7.335 ha. This is what she has proposed for herself.
6. I therefore confirm the grant in terms of paragraph 21 of the affidavit in support of confirmation of the grant. For avoidance of doubts land parcel number Kabuoch/ Kachieng/515 will be distributed in the following manner:
 - a) Joyce Adhiambo Omondi 7.335 ha; and
 - b) Clarice Awino Owino 2.445 ha.
7. The administrator is given 60 days within which to render accounts under section 83 (g) of the Law of the Succession Act.

DELIVERED AND SIGNED AT HOMA BAY THIS 28TH DAY OF FEBRUARY, 2022

KIARIE WAWERU KIARIE

JUDGE