



In re Estate of Albert Imbova Lisili (Deceased) (Succession Cause 117 of 2004) [2022] KEHC 12344 (KLR) (24 June 2022) (Judgment)

Neutral citation: [2022] KEHC 12344 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 117 OF 2004**

WM MUSYOKA, J

JUNE 24, 2022

JUDGMENT

1. What I am called upon to determine is a summons for confirmation of grant. It is dated September 4, 2019. It is brought at the instance of the administratrix, a widow of the deceased Regina Isutsa Imboba. She identifies the children of the deceased as the late Maurice Otunga Imboba, Geoffrey Lichungu Imboba, John Mukoto Imboba, Velentine Imbova Lisili, Florence Alema Imboba, Brenda Achevi Lisili and Imelda Mukasia Imboba. BIO is listed as a minor grandson. The deceased is said to have died possessed of Idakho/Shiseso/875 and 1174, measuring 1.26 hectares and 0.80 hectares, respectively. It is proposed that Idakho/Shiseso/1174 be devolved wholly upon BIO, but since he is a minor, the same to be held in trust for him by Velentine Imbova Lisili. It is proposed that Idakho/Shiseso/875 be shared out equally between John Mukoto Imboba, Geoffrey Lichungu Imboba and Velentine Imbova Lisili. The widow and Administratrix is to have a life interest in the share devolving upon John Mukoto Imboba. The three daughters, that is Florence Alema Imboba, Brenda Achevi Lisili and Imelda Mukasia Imboba have not been allocated any share. There is a consent on distribution in Form 37, dated 4th September 2018, allegedly executed by Velentine Imbova Lisili, Geoffrey Lichungu Imboba John Mukoto Imboba, Regina Isutsa Imboba, Florence Alema Imboba, Brenda Achevi Lisili and Imelda Mukasia Imboba.
2. An affidavit of protest was filed herein on December 13, 2018, by Mathias Atila Imbenzi, sworn on December 11, 2018. I shall refer to him as the protestor. He avers that the grant was obtained fraudulently, as Albert Imbova Lisili was not the beneficiary of Idakho/Shiseso/1174, which previously belonged to Thomas Kubandakale. He asserts that information was concealed from the court.
3. The administratrix passed away on May 26, 2019. She was substituted by her son, Valentine Imbova Lisili, vide orders made on March 9, 2020, on an application dated January 31, 2020. A grant of letters of administration intestate was issued to him, dated May 7, 2021. I shall refer to Valentine Imbova Lisili, hereafter, as the administrator.
4. The protestor filed another affidavit of protest on November 30, 2020, of even date. He explains that he had had a longstanding dispute over Idakho/Shiseso/1174 with the deceased, and at one time he, the protestor, was registered as owner. He points to litigation that was at the Land Disputes



- Tribunal. He asserts to be the legal representative of his father. He avers that the jurisdiction of Idakho/Shiseso/1174 does not lie with the High Court. He says he has filed a citation in the estate of the father of the deceased, in Kakamega MC Citation Cause No. E49 of 2020. He states that he intends to file a suit for cancellation of title in Idakho/Shiseso/1174. He, therefore, protests the distribution of Idakho/Shiseso/1174, but not of the other assets. Attached to that affidavit is a copy of proceedings in Kakamega RMC Award 42 of 1985, a copy of proceedings in Kakamega SRMC PE Civil Case No. 64 of 1986, a copy of a judgment in Kakamega HCCA No. 15 of 1987, a copy of green card for Idakho/Shiseso/1174, a copy of a grant ad litem made and issued in Kakamega CMC Ad Litem Cause No. E34 of 2020, copies of pleadings in Kakamega CMC Citation Cause No. E49 of 2020, and a certificate of official search for Idakho/Shiseso/1174.
5. On December 1, 2020 directions were given, for the disposal of the summons dated September 4, 2018 by way of viva voce evidence, based on the affidavits.
 6. The oral hearing happened on November 3, 2021. The administrator was the first to take to the witness stand. He asked that distribution be as proposed in the application dated September 4, 2018. He explained that Idakho/Shiseso/1174 was registered in the name of the deceased, and that the family had been in occupation since 1966. He stated that a late son of deceased, named Maurice, was the person who had been settled on Idakho/Shiseso/1174 by the deceased. He asserted that the family had never been uprooted from the land. He stated that there had been a case between the deceased and the family of the protestor. The case first went to the elders who gave the land to the family of the protestor, but that award was reversed by the court, on appeal, on grounds that the elders had no jurisdiction, and the court reverted the land to the deceased. During cross-examination, he stated that Idakho/Shiseso/1174 was originally registered in the name of his grandfather, Joseph Lisili Akwibatsa. He stated that Idakho/Shiseso/1174 was transferred to the deceased by way of gift.
 7. The protestor testified next. He stated that he stood by the contents of his protest affidavits. He stated the Idakho/Shiseso/1174 initially belonged to his father, Cyprian Atila Makata. He conceded that the registered proprietor was the deceased. He, the protestor, sued the deceased at the Tribunal, which ruled in his favour, but that decision was reversed by the High Court, on grounds that the Tribunal had no jurisdiction. He talked of a case where he had sued Peter Emeli, which turned on a burial dispute, but the same was dismissed. He said that there was no other suit on the ownership of Idakho/Shiseso/1174, except these probate proceedings. He stated that his father was buried on Idakho/Shiseso/1174. He said that he had not sued on the registration of Idakho/Shiseso/1174.
 8. At the close of the original hearings the parties indicated that they intended to file written submissions. They complied. I have read through their written submissions, and I have noted their respective arguments.
 9. The deceased herein died on October 25, 1993. Representation to his estate was obtained by the protestor, vide a grant made on February 14, 2007, and issued on June 7, 2007. His petition was filed in court on July 18, 2006. In it he described himself as a cousin of the deceased, and listed the survivors of the deceased as himself, Ernest Inzabula, Fabian Museve, Bernard Seru Jeri, Sevensia Shitukuli, Marceilina Aleme and Jane Atamba. It is not disclosed how these individuals were related to the deceased. The asset sought to be distributed was Idakho/Shiseso/1174. The said property was distributed, on November 26, 2008, on an application dated March 14, 2008, equally between the protestor, Ernest Inzabula Atila, Fabian Museve Atila and Bernard Seru Atila. A certificate of confirmation of grant, in those terms, issued, dated February 3, 2009.
 10. Subsequently, the widow of the deceased, Regina Isutsa Imbova, filed a summons for revocation of the grant of February 14, 2007. Her application was dated 17th September 2011. She also wanted a



grant issued in her name and the registration of Idakho/Shiseso/1174 to be reverted to the name of the deceased. She asserted that as widow of the deceased she had prior right to the administration of the estate of her late husband, the deceased herein. She complained that the estate herein was shared out amongst strangers, and the rightful heirs and beneficiaries had been left out. She identified the immediate members of the deceased to be those individuals cited in her summons for confirmation of grant dated 4th September 2018, who I have recited above. She stated that she had initiated Kakamega HCSC No. 57 of 1998 (but the gazette notice attached talks of Kakamega HCSC No. 58 of 1998) in the estate of the deceased. She complained of efforts by the protestor to disinherit her. She referred to the land disputes over Idakho/Shiseso/1174 between the deceased and the late father of the protestor. She attached to her application a letter from the Chief of Shirere Location, detailing the actual immediate members of the family of the deceased; a grant of letter of administration intestate, issued in Kakamega HCSC No. 57 of 1998, to her, dated 3rd April 1998; a gazette notice, No. 1186 of March 13, 1998; a plaint filed in Kakamega CMCCS No. 568 of 2010; and a judgment in Kakamega HCCA NO. 15 of 1987.

11. The application, dated September 17, 2011, came up for hearing on October 5, 2016, before C. Kariuki J. It had been served, but the then administrator, the protestor herein, had not opposed it. It was for a good reason or cause, that he did not oppose it, for he had obtained the grant fraudulently, by concealing information from the court and misrepresenting facts, by way of claiming to be a survivor of the deceased, when he was not, and by failing to disclose the real or actual survivors and immediate members of the family of the deceased. The court granted the application, as it was not opposed. Subsequently, a grant of letters of administration intestate was made and issued to the widow, based on those orders, dated October 25, 2016. Thereafter, she filed the summons dated September 4, 2018, which is the subject of this judgment.
12. Before I discuss the distribution of the estate herein, I should first of all dispose of the protest. The protestor is not asking me to allocate to him Idakho/Shiseso/1174, but rather that I should isolate that property, by way appropriation and removal from the schedule of assets available for distribution, so as to allow the protestor prove his proprietary rights over it in separate proceedings, before a court with jurisdiction, as this court has no jurisdiction to determine the questions of ownership or title to it, and its occupation and use. That is what Rule 41(3) of the *Probate and Administration Rules* requires, and it would appear that the protestor would like me to exercise discretion or jurisdiction in accordance with the said Rule 41(3).
13. For avoidance of doubt, Rule 41(3) of the Probate and *Administration Rules* provides as follows:

“Where a question arises as to the identity, share or estate of any person claiming to beneficially interested in, or of any condition or qualification attaching to, such share or estate which cannot at that stage be conveniently determined, the court may prior to confirming the grant, but subject to the provisions of section 82 of the Act, by order appropriate and set aside the particular share or estate or the property comprising it to abide the determination of the question in proceedings under Order XXXVI, rule 1 of the Civil Procedure Rules and may thereupon, subject to the proviso to section 71(2) of the Act, proceed to confirm the grant.”
14. This is not the first time that I am considering the issue of the protestor’s entitlement or right to Idakho/Shiseso/1174. That issue came up in an application dated June 29, 2018, in which the protector was asking the court to bar the family of the deceased herein from interring the remains of a son of the deceased, known as Maurice Otunga Imbova, on the said land, Idakho/Shiseso/1174, on grounds that that land, Idakho/Shiseso/1174, was his ancestral land. I delivered a considered ruling on



the issue, dated 10th July 2018, dismissing the application, and allowing the body of the said Maurine Otunga Imbova to be interred on Idakho/Shiseso/1174. The issue of the protestor's entitlement to Idakho/Shiseso/1174 is, therefore, *res judicata*, in view of my findings and holdings in the said ruling.

15. This is what I said in paragraphs 10, 11, 12 and 13 of the said ruling:

“ 10. The applicant urges his case on the basis that the land in question, although registered in the name of the deceased, was actually his ancestral land. He says that his father was entitled to it but somehow the deceased herein got to be registered as proprietor thereof, and that he, therefore, considers the proprietorship of the deceased to be in trust for him or for the estate of his father. The issue of the applicant asserting a liability in the body of the application is to me neither here nor there as he has not articulated on the alleged liability in his affidavits in support of the application. It is not in dispute that Idakho/Shiseso/1174 is registered in the name of the deceased herein. A certificate of official search on record indicates that the registration happened on November 13, 1981. The property was registered under the *Registered Land Act*, cap 300, Laws of Kenya, which has since been repealed. Under that law the registration conferred the proprietor with all the rights of ownership which were spelt out in that statute. The said statute also spelt out the processes for challenging any registration undertaken under the statute. The provisions in the Registered Land Act have been carried over into the new legislation, the [Land Registration Act](#), Act No. 3 of 2012.

11. The applicant claims ancestral rights over the property. He has not given details in his affidavit as to when those ancestral rights accrued. He says it was his father who should have been registered as proprietor instead of the deceased, yet he does not explain the circumstances under which the deceased came to be so registered instead of his father. I do not wish to dismiss offhand the applicant's claims, given that the certificate of official search on record in respect of Idakho/Shiseso/1174 shows that Cyprian Abira Makaka, who the applicant has deposed to be his father, had lodged a caution in the register on May 5, 1989 claiming licence/beneficial interest. I started the ruling by tracing the history of this cause, and I noted that it was the applicant who initiated it by way of citation to urge the respondent to obtain representation, and grant was made to him after she apparently ignored the citation. It would appear to me that the applicant could have a claim of one kind or other to the property.

12. What perturbs me, however, is that the deceased herein was registered in 1981 as proprietor of the subject property, and a caution was lodged against the title in 1989. I wonder why no steps were taken shortly after the registration in 1981 to challenge it or after 1989 as a follow-up to the registration of the caution. The father of the applicant lodged a caution and then went to sleep. Yet, the Registered Land Act has elaborated on how registration of a title is to be challenged through the office of registrar of land. Even if the applicant or his father did not wish to follow that process, they could still have gone straight to court. The applicant has not placed anything on record to show that he or his father took any steps to challenge the registration of the deceased as proprietor of Idakho/Shiseso/1174. Like the respondent, I am asking why the applicant, and his father before him, should have waited from 1981 only to raise these issues upon the death of the deceased.

13. The matters that the applicant is now raising touch on the ownership of Idakho/Shiseso/1174, as between his father and the deceased. I have already stated that these matters ought to have been placed before the relevant land registrar shortly after the registration of the deceased as proprietor in 1981 or after the lodge of the caution in 1989. I have already noted that these are matters that ought to have been placed before a court of law



for determination of ownership and for an audit of the registration process. I agree with the respondent that this probate court would have no jurisdiction to determine the question of ownership of Idakho/Shiseso/1174, if that is what the applicant is pursuing. *The Constitution* has vested jurisdiction on the Environment and Land Court on matters relating to that. That is where the issue ought to be thrashed out.”

16. The protestor is really re-litigating the point, in these confirmation and protest proceedings, yet I believe, I had dealt with it, with finality, in the ruling of 10th July 2018.
17. It would appear that the protestor somewhat thinks that the law on limitation of actions, as set out in the *Limitation of Actions Act*, cap 22, Laws of Kenya, does not apply, or should not be taken into account, when it comes to probate and administration. The deceased herein was registered as proprietor of Idakho/Shiseso/1174 on 13th November 1981. The protestor, or his ancestor, challenged that registration, before elders/Tribunal, who or which awarded the land to the protestor or his family. The deceased challenged that award before Hon. JM Khamoni, Senior Resident Magistrate (SRM), as he was then, who upheld the award. The deceased filed appeal against the holding by Hon. Khamoni, SRM, in Kakamega HCCA No. 215 of 1987. His appeal was allowed, on the basis that the elders had no jurisdiction, to make the award that they had made. That meant that Idakho/Shiseso/1174 remained registered in the name of the deceased, which registration subsisted until his death. These facts were admitted by the protestor at the oral hearing of the instant application. There is no evidence or proof that the judgment in Kakamega HCCA No. 15 of 1987 was ever reversed on appeal or on review. There is no evidence or proof that the protestor ever filed any other suit after the judgment of 1987, and obtained orders that granted Idakho/Shiseso/1174 to him. He conceded as much in the oral hearings conducted with respect to the instant application. As recorded above, registration was done in 1981, the deceased died in 1993, the High Court ruled in 1987 that the elders had no jurisdiction to award Idakho/Shiseso/1174 to the protestor, and, from 1987 to date, the protestor took no step to prove his entitlement to the land. The limitation period for recovery of land is twelve years, according to section 7 of the *Limitation of Actions Act*. Twelve years expired in 1999 or thereabouts, counted from 1987, when the judgment in Kakamega HCCA No. 15 of 1987 was delivered. The protestor ought to have filed a suit to recover Idakho/Shiseso/1174 from the deceased or his estate by 1999. Such a suit would have determined the question as to who was entitled to Idakho/Shiseso/1174, as between the protestor or his family, on one hand, and the deceased or his estate, on the other. He did not file such suit. He was caught up by the limitation period. Any claim brought after 1999 is or was bound to be stale; even if brought within a probate and administration cause in the estate of the deceased herein.
18. For avoidance of doubt, section 7 of the *Limitation of Actions Act* states as follows:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it is first accrued to some person through whom he claims, to that person”
19. I note that the protestor lodged a caution against the title on 5th January 1989. But such a caution cannot override what section 7 of the *Limitation of Actions Act* requires. For as long as the limitation period has ran out or expired or lapsed, the registration of the caution on 5th January 1989 is of no consequence, and it cannot prevent the probate court from distributing Idakho/Shiseso/1174, as a property in the estate of the deceased. The role of the probate court is to distribute assets that form or comprise the estate of a deceased or dead person. The said assets should be undisputed, in terms of ownership or proprietorship. The asset herein, Idakho/Shiseso/1174, is undisputed, with regard to ownership or proprietorship. It is registered in the name of the deceased, and the period within which the protestor should have challenged the said ownership or proprietorship ran out or expired or lapsed



in 1999. The protestor has no decree from any court of competent jurisdiction, awarding Idakho/Shiseso/1174 to him. It is, therefore, clear, beyond peradventure, that Idakho/Shiseso/1174, vests in the administrator herein, by virtue of section 79 of the Law of Succession Act, Cap 160 Laws of Kenya, and he has authority to distribute it, to those entitled to it, as beneficiaries of the estate of the deceased.

20. I had stated, in my ruling of 10th July 2018, at paragraph 13, that the High Court no longer has jurisdiction to delve into these questions of ownership of land, by dint of Articles 162(2) and 165(5) of the Constitution, and that the protestor would have been better off before the court with jurisdiction, that is the Environment and Land Court. I had hoped that the protestor would take the heed and move the Environment and Land Court appropriately. Obviously, he did not pay heed or get the hint, or he simply ignored it, for he is, in the instant confirmation and protest proceedings, asking me to give him time to do what I suggested he ought to do or to have done, in my ruling of 10th July 2018, that is to initiate separate proceedings on the ownership of Idakho/Shiseso/1174. The protestor had opportunity, after 10th July 2018, to move the Environment and Land Court appropriately, instead of waiting for the application herein, for confirmation of grant, to be filed on 6th September 2019, for him to raise the same issue. There is lethargy and indolence. Indeed, when he was, himself, administrator of the estate, he could have still moved the court with appropriate jurisdiction, by way of originating summons, for a determination on the matter of ownership of Idakho/Shiseso/1174 as between himself or his family and the estate herein. He passed up that opportunity, and instead rushed to get distribution orders on a property that he was not entitled to under succession law. Before proposing it for distribution, he ought to have had obtained orders declaring that he was entitled to it. Indeed, he did not even need to initiate a succession cause in the estate herein, rather he should have initiated a land suit for determination or declaration of his rights in the property.
21. There is no doubt, in my mind, that there would be no need for me to appropriate and set aside Idakho/Shiseso/1174, in terms of Rule 41(3) of the Probate and Administration Rules, as invited by the protestor to do, for determination of the question of its ownership, or title to it, as between the protestor and the estate herein, for the reasons that should emerge from the foregoing or receding paragraphs of this judgment. It would serve no purpose at all.
22. Having disposed of the issue as to whether Idakho/Shiseso/1174 is an asset in the estate of the deceased, I now advert to its distribution and that of Idakho/Shiseso/875.
23. As at the date the summons for confirmation of grant, that I am dealing with, was lodged herein, the survivors of the deceased were his widow, three sons, three daughters and a grandson from a dead son of the deceased. The widow passed on in the course of the proceedings, on 26th May 2019. That would mean that the survivors are now the three sons, the three daughters and the grandchildren from the dead son. Where an intestate is survived by children only, as in this case, the estate is distributable under sections 35 and 38 of the Law of Succession Act. The shares due to children of intestates, under sections 35 and 38 of the Law of Succession Act, are meant to devolve upon the children of the deceased, not exclusively to the sons and unmarried daughters of the deceased. The reference to children, in those provisions, covers all the children of the deceased, irrespective of their gender. No distinction is made between male and female children, whether married or unmarried. It presupposes equal treatment of such children. The deceased herein had four sons and three daughters. These are the children of the deceased herein for the purposes of succession to his estate. Under sections 35 and 38 of the Law of Succession Act, they should take equally.
24. What I have said above regarding the provisions of sections 35 and 38 of the Law of Succession Act, should be read together with the provisions of the Constitution of Kenya, 2010. article 27 provides for equality of men and women, and provides for freedom from discrimination against women in all



spheres of life. It asserts, at sub-Article (1), that every person is equal before the law and has the right to equal protection and equal benefit of the law. Sub-Article (3) reinforces it, by stating that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres of life. The constitutional principles enshrine the policy and law stated in the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW), to which Kenya is a signatory, and has the force of law in Kenya, by dint of article 2(5)(6) of *the Constitution*. Women are to be treated equally with men, and without any form of discrimination, based on their gender, is the bottom-line. The three married daughters of the deceased are women, who should have the benefit of article 27 of *the Constitution* and the principles spelt out in CEDAW.

25. For avoidance of doubt, sections 35 and 38 say:

“ 35. Where intestate has left one surviving spouse and child or children

(1) ... 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 of the residue of the net intestate estate

(2) ...

(3) ...

(4) ...

(5) ... The whole residue of the net intestate estate shall, on the death, or, in the case of a widow, remarriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

36 ...

37 ...

38. Where intestate has left a surviving child or children but no spouse

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall ... devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

26. In this case, the deceased had been survived by a spouse, and children. The spouse has since dead. If distribution were done during her lifetime, section 35(1) would have applied, so that she would have been entitled to life interest over the assets, and, thereafter, upon determination of the life interest, the property would have devolved equally to the children. Her death has brought the property under the realm of sections 35(5) and 38, where only the children are available at the distribution of the estate, in which case they should all take equally, irrespective of gender or marital status. However, a survivor cannot be forced to take a share in the estate if they are not keen on taking it up. The law allows such survivors to forgo their share by either renouncing or waiving or disclaiming it in writing or by way of stating the fact in open court before the Judge or Magistrate trying the matter. A renunciation or waiver or disclaimer in writing may take the form of an affidavit or deed of renunciation or by consent on distribution executed in Form 37, which carries a distribution where the survivor or beneficiary is depicted as taking nothing or nil. The court is empowered, under Rule 40(8) of the Probate and Administration Rules, to distribute an intestate estate as proposed, without a formal



hearing, so long as the survivors or beneficiaries have executed the consent in Form 37. That would mean that the court would have to vary the entitlements under the *Law of Succession Act*, and align them to the renunciations or waivers or disclaimers. Rule 41(1) of the Probate and Administration Rules envisages that such survivors or beneficiaries, who have not renounced or waived or disclaimed or varied their entitlement, either by way of affidavit or deed or through Form 37, would attend court, at confirmation, where they would state their position before the Judge or Magistrate. In this case, three of the survivors or beneficiaries have renounced or waived or disclaimed their entitlement through Form 37. These are the three daughters, namely Florence Alema Imboba, Brenda Achevi Lisili and Imelda Mukasia Imboba. They have signed Form 37, which depicts them as getting nothing from the estate. I shall, accordingly, presume that the signatures on the form are theirs, and I shall give the administrator the benefit of the doubt. I shall use the discretion given under Rule 40(8), and determine the application without hearing Florence Alema Imboba, Brenda Achevi Lisili and Imelda Mukasia Imboba under Rule 41(1).

27. Section 41 of the *Law of Succession Act* is relevant here, for one of the sons of the deceased is dead, and it is indicated that he was survived by a son, who should be a grandson of the deceased herein. Access by grandchildren, to the estates of their late grandparents, is indirect, through section 41. They step into the shoes of their dead parents, and take the share that would have gone to their late parents, through the principle of substitution or representation. The grandson of the deceased herein is said to be BIO, a son of a son of the deceased known as Maurice Otunga Imboba. The said grandson has no direct right to the estate of his late grandfather herein, but he should take the share that ought to have gone to his late father. I was not told whether he was the only child of his late father, that is the late Maurice Otunga Imboba, and I am not, for that reason, inclined to postpone this confirmation exercise, under section 71(2)(d), to ascertain whether the late Maurice Otunga Imboba had other children, besides BIO. So, instead of applying section 41, and devolving the share of the late Maurice Otunga Imboba to BIO, I shall devolve it to the estate of the late Maurice Otunga Imboba, to be distributed in a cause to be initiated in the name of the said Maurice Otunga Imboba, where all the survivors, including BIO, shall participate in the proceedings, to obviate the possibility of genuine survivors of the late Maurice Otunga Imboba or beneficiaries of his estate, who may not have been disclosed in these proceedings, being disinherited or left out of the distribution of his estate.

28. For avoidance of doubt, section 41 of the *Law of Succession Act* provides:

“Where reference is made in the Act to the “net intestate estate” or the residue thereof devolving upon a child or children, the property comprised therein shall be held in trust, in equal shares in the case of more than one child, for all or any of the children of the intestate who attain the age of eighteen years or who, being female, marry under that age, and for all or any of the issue of any child of the intestate who predeceased him and who attain that age or so marry, in which case the issue shall take through degrees in equal shares, the share which their parent would have taken had he not predeceased the deceased.”

29. In the end, I shall make final orders as follows:

- (a) That I hereby confirm the grant made herein on March 9, 2020, to Valentine Imbova Lisili, so that the estate shall be distributed as proposed in the paragraph 7 of the affidavit of the late administratrix, Regina Asutsa Imboba, sworn on 4th September 2018, and the consent on distribution of even date, save that the share due to the late Maurice Otunga Imboba shall not devolve upon BIO as proposed, but upon the estate of the late Maurice Otunga Imboba, to be dealt with in the manner indicated in paragraph 27 hereabove;



- (b) That I also hereby confirm the administrator appointed on March 9, 2020, so that he can go on to complete administration of the intestate estate herein;
- (c) That a certificate of confirmation of grant shall issue to him accordingly;
- (d) That the protest by the protestor, Mathias Atila Imbenzi, comprised in the affidavits that he swore on December 11, 2018 and November 30, 2020, is hereby dismissed;
- (e) That the matter shall be mentioned after six months, to confirm whether transmission will have been done, according to the confirmation orders made here above, and whether administration will have been completed, so as to close the file;
- (f) That the Deputy Registrar shall call for the court file in Kakamega HCSC No. 57 or 58 of 1998, whichever of the two relates to the estate of the deceased herein, and put it together with the instant file;
- (g) That each party shall bear their own costs; and
- (h) That any party, aggrieved by these orders, has leave of twenty-eight days, to move the Court of Appeal, appropriately.

30. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 24TH DAY OF JUNE 2022

WM MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Ms. Anguba, instructed by Shitsama & Company, Advocates for the applicant.

Mr. Shivega, instructed by Victor Shivega & Company, Advocates for the protestor.

