



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of William Washiali Khwale (Deceased) (Succession Cause
18 of 2019) [2022] KEHC 10995 (KLR) (25 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 10995 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 18 OF 2019
PJO OTIENO, J
JULY 25, 2022
(FORMERLY NAIROBI HIGH COURT SUCCESSION CAUSE NO. 205 OF
2001)
IN THE MATTER OF THE ESTATE OF WILLIAM WASHIALI KHWALE
(DECEASED)
AND
WASHINGTON S. WASHIALI KHWALE 1ST PETITIONER/ADMINISTRATOR
WYCLIFFE WAKHUSAMA WASHIALI ... 2ND PETITIONER/ADMINISTRATOR**

RULING

1. Before the Court for determination is the application by the 1ST Administrator seeking that the grant of letters of administration intestate made to Washington S. Washiali Khwale be confirmed.
2. The Affidavit sworn in support thereof gives twenty four (24) names as the beneficiaries of the estate and proposes how to distribute the estate to such beneficiaries. The proposal is supported by a list of the beneficiaries with portions due to each of the beneficiaries which was signed by respective beneficiaries save for Whycliffe Wakhusama Washiali and Aggrey Mukolwe Washiali.
3. The affidavit in support equally asserts that the family had agreed on what each beneficiary would get and that a portion measuring 0.15 would serve as a road reserve.
4. Of the named beneficiaries only Mr. Wycliffe Washiali Wakhusama and Aggrey Mukolwe Washiali opposed the mode of distribution. Mr. Wycliffe Washiali who swore the Affidavit of Protest proposed that the two Administrators and Aggrey should each get six (6) acres out of the 34 acres while the rest of the beneficiaries share the balance of 16 acres. In fact in the proposal, thirteen (13) beneficiaries are proposed to get 0.124 acres each while others to get 3.5, 3.0, 2.5, 2.0 and 1.5 acres. No reason is advanced why there ought to be such disparity in the shares to the different beneficiaries.



5. That counter proposal was responded to by the 1st Administrator by an Affidavit sworn on the 6.01.2022 in which it is asserted that all the beneficiaries of the estate attended Court on 17.01.2020 and that of the twenty four (24) beneficiaries, twenty two (22) were in support of his proposal with only two being against it on the basis that the land had been encroached.
6. When parties appeared in Court to argue the application for confirmation and distribution, the 1st Administrator told the Court that his proposal was consensual among the majority and was in line with the hedges on the ground and use of land by the beneficiaries.
7. For the two beneficiaries opposed to the proposal, the contention was that they were okay with the proposal save that there was a portion intended for their blood brother which they demanded to be isolated and share between the two of them because that blood brother died leaving behind no widow nor children. Both equally admitted that they were occupying land as shown to them by the deceased prior to death and that the 1st Administrator's proposal respected the hedges on the ground.
8. While the principle of distribution in intestate succession under Section 35, 38 and 40 is that each beneficiary would get equal share subject to any inter vivos settlements, where the parties agree on a mode of distribution the court is obligated to honour such proposal.
9. Here the Court notes that a majority of the beneficiaries, 22 out of 24, agree to the proposal by the first Administrator as respecting user of the land on the ground. The two objected to the proposal do not seek the employment of any virtuous aspirations like equality in distribution but a larger share for only the two of them. That I consider to be unjust and contrary to the family spirit demonstrated in the signed document. I do find that to accede to their demand would result in an inequitable outcome.
10. Having considered all circumstances and the facts revealed to Court in the three Affidavits filed, I do accept the proposal by the first Administrator as just and conscionable hence the Summons for Confirmation of grant is allowed as prayed the grant is confirmed and the estate shall be distributed in terms of paragraph 4 of the Affidavit of the 1st Administrator sworn on the 5.12.2019.
11. Let the Certificate of Confirmation of grant issue forthwith to enable the two Administrators transmit the shares to the beneficiaries within sixty (60) days from today.
12. For avoidance of doubt, and to avoid any application compelling execution of the transmission documents, it is directed if the 2nd Administrator shall be hesitant and fail to sign the deeds of transmission by the 30.8.2022, the 1st Administrator shall have the liberty to execute the same singularly or have the same executed by the Deputy Registrar.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 25TH DAY OF JULY 2022.

PATRICK J. O. OTIENO

JUDGE

In the presence of:

Mr. Wycliffe Washiali Wakhusama

Mr. Aggrey Mukolwe Washiali

No appearance for Washington Washiali

Court Assistant: Kulubi

