



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 277 OF 2013

IN THE ESTATE OF:

ENOSH OKINDA NJOGA.....DECEASED

BETWEEN

RUTH SUSAN OKINDA.....PETITIONER/ RESPONDENT

AND

1. MILLICENT OKINDA

2. MERCY OKINDA

3. SABINA OKINDA..... OBJECTORS/ APPLICANTS

RULING

1. Ruth Susan Okinda the petitioner/respondent herein and Millicent Okinda the 1st objector/applicant herein are widows of the late Enosh Okinda Njoga. They have disagreed on the mode of distribution of the estate.
2. According to the proposal by the objectors/applicants, the estate ought to be divided according to section 40 of the Law of Succession Act, without factoring in what each widow may have contributed.
3. On the other hand, the petitioner/applicant has contended that her contribution ought to be considered.
4. The deceased herein died intestate. This was a polygamous union. He was survived by the two widows and four children. The petitioner and the deceased had no child while the 1st objector/applicant and the deceased had four children.
5. The petitioner contended that she established the Star of the Border Academy while her deceased husband was a clerk with the Ministry of Water. She was a career teacher.
6. The evidence by the 1st objector was that by the time the land on which the school stands was bought and the school established, she was married.
7. Peterson Wachira (PW1) produced a certificate of registration in respect of the Star of the Border Academy. It was in the name of the deceased and Ruth Okinda. He also produced the authority from the ministry of Education dated 4th September 2000 which was addressed to Ruth Okinda.
8. From these documents we can be able to deduce that Ruth Okinda was actively involved in the establishment and the running of the school. It is also not lost that had the deceased intended to include Millicent Okinda, nothing could have been a hindrance. He simply intended this property to be Ruth's.
9. There is evidence on record to show that Ruth Okinda was a career teacher. We cannot therefore wish away her role and contribution in the Star of the Border Academy.
10. I have been urged to find that this property is not available for distribution. The business was registered in the name of the deceased and Ruth Okinda. Had there been an intention to have shares, nothing would have hindered them to do so. The deceased knew at the time that he

was polygamous and his action must have been deliberate. The doctrine of survivorship in respect of property held jointly is in favour of Ruth Okinda. I therefore find that this property is not available for distribution as part of the estate of the deceased.

11. The deceased was polygamous and his estate will be distributed in accordance with section 40 of the law of Succession Act which provides:

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

12. In this case, there shall be six units. The distribution shall factor any benefit the deceased had given to any beneficiary during his lifetime as envisaged under section 42 of the Law of Succession Act which provides as follows:

Where—

(a) an intestate has, during his lifetime or by will, paid, given or settled any property to or for the benefit of a child, grandchild or house; or

(b) property has been appointed or awarded to any child or grandchild under the provisions of section 26 or section 35 of this Act, that property shall be taken into account in determining the share of the net intestate estate finally accruing to the child, grandchild or house.

13. The petitioner is given 30 days within which to file proposed distribution in line with the above orders. Failure to do so, then the grant to her shall automatically be revoked.

14. Each party shall bear own costs.

DELIVERED and SIGNED at BUSIA this 27th day of January, 2021

KIARIE WAWERU KIARIE

JUDGE