



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Gongo Kubo Mwaseme (Deceased) (Succession Cause
508 of 2014) [2021] KEHC 9820 (KLR) (28 May 2021) (Ruling)**

Neutral citation: [2021] KEHC 9820 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 508 OF 2014**

JN ONYIEGO, J

MAY 28, 2021

RULING

1. The deceased herein died intestate on April 8, 1996 while domiciled in Kadotoni Mtwapa Kenya. He was survived by his wife Mwaka Gongo Kubo and their sons namely, Mwanyanya Gongo Kubo, Lawrence Beja Gongo and Raphael Ngoro Gongo. On December 9, 2014, Mwaka Gongo Kubo and Raphael Ngoro Gongo petitioned for a grant of representation. The same was granted and issued on October 2, 2015. It was subsequently confirmed on October 24, 2016 and the estate. L.R Kilifi/ Mtwapa/255 shared equally between the three beneficiaries to the exclusion of the mother who had already died. Subsequently.
2. Vide an application dated November 26, 2018 and filed on December 13, 2018 Raphael Ngoro the surviving administrator sought court's orders for substitution of the deceased's heirs' names and alteration of the certificate of confirmation of grant. The application is supported by an affidavit sworn by Raphael Ngoro Gongo who stated that; one of the dependants namely, Lawrence Beja Gongo died on December 20, 2016; Lawrence's name be deleted and the same be replaced as a dependant by his wife Kanze Beja Gongo who shall then inherit his share.
3. It was further averred that the name of Peter Murimi Muriithi be inserted in the certificate of confirmation as one of the beneficiaries being a purchaser who bought one acre of the said land on September 18, 2014. That after providing Peter his share, the remaining portion be shared equally among three administrators inclusive of the wife to Lawrence.
4. By an affidavit sworn on October 12, 2020, Raphael Ngoro one of the administrators opposed insertion of any other administrator other than those recognized by the court. He was however agreeable to Kanze getting the share of her husband.
5. When the matter came up for hearing, the applicant merely adopted the content in his affidavit in support of the application.
6. I have considered the application herein and the affidavit in support. The application seeks to remove and replace the name of the deceased dependant Lawrence with his wife Kanze. Under Section 81 of the [Law of Succession](#), where there are more than one administrator or executor and one or more dies, the



role of administration of the estate shall vest in the surviving administrators or executors. Accordingly, in accordance with that provision, a fresh grant and certificate of confirmation of grant shall issue in the name of the surviving administrator namely; Raphael Ndoro Gongo as the sole administrator.

7. In any event, Section 66 of the [Law of Succession](#) does not recognize a daughter in law as an administrator of an estate when those in the family lineage are still alive. Daughters in law are not anywhere mentioned in the order of consanguinity.
8. Regarding heirs to Lawrence to inherit his share of the estate, the applicants are in agreement that Kanze can inherit her husband's share (estate). Accordingly, it is my holding that Kanze has a right to inherit her husband's share for her benefit and that of her children in equal share. Her name will be included in the certificate of confirmation representing the estate of Lawrence in equal share with the other beneficiaries.
9. Regarding the inclusion of Peter Murimi as a purchaser, this is a stranger to the estate. He was not listed as a creditor beneficiary when the petition for the grant was filed. No liability was indicated in form P&A 5. This is an afterthought. If he bought land in the year 2014 long after the deceased had died in 1996 and before the grant was confirmed, it amounts to intermeddling with the estate by the purported seller which is a criminal offence under Section 45 of the Law of Succession. The best the purchaser can do is to claim his purchase price from the intermeddler or he awaits until they get their shares transferred to themselves and then sell to him as they may wish.
10. Accordingly, the application is allowed with orders that;
 - (a) the certificate of confirmation of grant issued on October 24, 2016 be amended so as to remove the name of the deceased dependant one Lawrence Beja Gongo and replace it with the name of Kanze Benja Gongo his wife representing his estate
 - (b) the grant of letters of administration issued on October 2, 2015 do issue in the name of the surviving administrator Raphael Ndoro Gongo
 - (c) the share of the deceased beneficiary Lawrence Beja Gongo does devolve to his wife one Kanze Beja Gongo for her benefit and that of her children in equal share.

DATED SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 28TH DAY OF MAY, 2021

J. N. ONYIEGO

JUDGE

