



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

SUCCESSION NO.98 OF 2016

IN THE MATTER OF THE ESTATE OF GEORGE CHIWAI BARUA(DECEASED)

AND

IN THE MATTER OF AN APPLICATION TO REVOKE A GRANT MIRIAM JEROP.....OBJECTOR

CORAM: Hon. Justice R. Nyakundi

Odhiambo Advocate for the Applicant

Katsoleh Advocate for the Objector

R U L I N G

The late George Barua died intestate on 28th October, 2014 he was survived by two wives Miriam and Elizabeth, whereas the children remain to be C.C.A as the son to Elizabeth Densee being the son to Miriam. The rest of the children who fall within the scope of section 29 of the Law of Succession Act include Chiwai, Swalhe, Rehema.

It is not clear on how Derrick and Dennis made it to the list of siblings in the amended summons for Confirmation of Grant. From the judgement on revocation of grant dated 16th January, 2020, there was no residual findings made on other dependants of the deceased in the name and style of Derrick and Dennis.

In accordance to the said statute on probate and administration. It is more reasonable to conclude that the deceased intestate estate cannot be distributed to Derrick and Dennis as provided for under Section 29 of the Law of Succession. I agree with the objector's confirmation dated 3rd May, 2021 in respect of her disposition on the true beneficiaries to the estate of the deceased.

Having carefully considered the entire record since the filing of the petition for intestate administration by Elizabeth and subsequent revocation of the making of the grant of letters of administration in her favor, in the context of the decree the clause on administrators to the estate was bestowed to Elizabeth and Miriam, in terms of section 66 of the Act. It is now the duty of this Court to determine issues for confirmation of grant in this long protracted succession litigation.

Determination

According to the evidence the deceased was married to both Elizabeth and Miriam. In this case at the time of his death he was survived with the following children; - Chiwai, Swalehe, Rahma and Denzel. In this regard the requirements as to the mode of distribution shall be governed by the provisions of section 35 (11), 36 (1) and 37 of the Law of Succession Act subject to section 40 of the said Act. The second aspect of this case also summarized from the affidavit evidence is on the distribution of the estate in polygamous marriage. According to section 40 of the Law of Succession; -

“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. 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 and 38.”

It is most opportune at this juncture to make reference to the principles of distribution of an Estate in polygamous marriages. **“See Mary Rono V William Rono [2005] eKLR, Samuel Miriri [Deceased] V AIMC 2014eKLR, Juma Shiro [Deceased]2016eKLR.”** I take it to be a cardinal principle that the Court should construe the provisions on distribution and give effect to the interest of the heirs on the intestate succession predicated upon the above provisions. The deceased true estate as defined under section 3 of the Law of Succession comprises; -

1. *Portion No.Cr 495330 Mombasa District*
 2. *Plot No.Kilifi/Mtondia/2018*
 3. *Share in Plot LR No.5054/209 Grant No. Cr. 27407*
 4. *Uns. Plot NO.56 Kilifi*
 5. *Motor Vehicle Registration No.KBD 100Y*
 6. *Motor Vehicle Registration No.KAV 021L*
 7. *Kilifi Town House Plot NO.5054/209*
 8. *Bofa Shingila House Plot No.5054/209*
 9. *Portion No.Kilifi/Mtondia Plot NO.198/2/13*
 10. *Portion No.Bamburi/Mombasa/MN/1/1855*
- LRCR No.49530*
11. *Unsurveyed Plot at Kilifi-Kwa Mike area/Prison Area*
 12. *Barclays Bank A/C No. 2025578107*
 13. *Equity Bank A/c*
 14. *National Bank A/c*
 15. *Co-operative Bank A/c*
 16. *CFC Bank A/c*

On distribution its an agreed fact that the parties have never had a meeting of minds on anything to do with the intestate property or heirs to that Estate following the decision of this Court and circumstances of the case. The Court being seized of jurisdiction can go ahead to distribute the Estate pursuant to the aforementioned provisions. It is this Court considered view that the estate be distributed as follows, which may yield a better result consistent with the law applicable at the moment.

This Court in putting itself in the deceased arm – chair will seek to take cognizance of the fact that he was married to two wives. He therefore left two households surviving him at the time of his demise. Given the applicability of the provisions 35,36,37, 38 and 40 of the Act. It's entirely reconcilable to accord the two spouses the matrimonial houses as currently domiciled.

Miriam – Plot No.Kilifi/Mtondia/

Elizabeth - Bofa Shingila Plot No.5054/209

The Unsurveyed Plot at Kilifi/Mtondia, Kilifi Town House Plot/615/No.5054/594, Bamburi/Mombasa/MN11/1855 No.49530 from the words of the statute shall be shared equally amongst the children of the deceased save for Derrick and Dennis (legally excluded) to benefit from the Estate as known in law. In the alternative based on the established law and the circumstances in the case at bar, if the equal share is impracticable a valuation of the immovable property be undertaken by an independent valuer. In response to the valuation report, the scheduled properties be sold and the financial gain of the respective sale be shared equally among the surviving children of the deceased. I have further gleaned the issue on Bank accounts specifics of Barclays Bank, Equity Bank, National Bank, Co-operative Bank and CFC Bank, the most appropriate declarations that may operate is the need for the account receivables to be shared equally amongst the spouses and their respective children. The income purported by derived from those accounts once verified and as part of the estate shall benefit each of the heirs to that Estate of the deceased. It is also important to note that in the case of motor vehicles its declared that KBD 100Y be held on interest and benefit for the 1st house whereas KAV 021L be and is hereby bequeathed to the 2nd house.

As a consequence, the amended summons for Confirmation of Grant be allowed, with the residual variations, on the mode of distributions with no orders as to costs.

DATED, SIGNED AND DELIVERED via email AT MALINDI THIS 30TH DAY OF JULY, 2021

.....

R. NYAKUNDI

JUDGE