

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 5 OF 2018

IN THE MATTER OF THE ESTATE OF EDWARD MAPESA WAMUKHUMA (DECEASED)

RULING

1. What I am called upon to determine is the summons for confirmation of grant, dated 26th February 2021.
2. It is brought at the instance of the administratrix, Agnece Andati Nandwa. She has listed 7 individuals as the survivors of the deceased. The relationship between these individuals and the deceased is not disclosed.
3. The deceased died intestate, after the Law of Succession Act, Cap 160, Laws of Kenya, had come into force, and, therefore, distribution of the estate has to be in terms of Part V of the Act. Under that Part, the estate is distributed to the survivors of the deceased, his kin, principally surviving spouses, followed by children, followed by parents and then other relatives follow. Priority is given to the surviving spouse and children, other relatives, such as parents, siblings and grandchildren do not have priority, unless the deceased did not have a spouse or children surviving them, and, therefore, they can only take where there is no surviving spouse or child.
4. The court can only tell whether there was a surviving spouse or surviving child, where the applicant indicates how the persons listed as survivors were related to the deceased. I would emphasize that the right or entitlement to inheritance in intestacy is dependent on the kinship relationship between the deceased and the survivors. The survivors take in degrees, with the surviving spouse having priority, followed by the children and so on.
5. In the application before me, I am unable to share out the estate since I do not know how the persons listed related to the deceased. I cannot tell who would be entitled under section 35, or section 36, or section 38, or section 39 of the Law of Succession Act. The proviso to section 71(2) and Rule 40(4) of the Probate and Administration Rules require the court to be satisfied that the persons who are beneficially entitled to a share in the estate have been ascertained. That requires applicants to give details of the persons who survived the deceased, by giving their names and disclosing their relationship with the deceased. They should tell the court if the deceased had sons and daughters, giving their names. If any son or daughter was dead, indicate when he or she died, providing supporting documentation, and state whether the dead son or daughter had children, and if they had, give names of such children. If there was no surviving spouse or child, then they should disclose whether the parents of the deceased were still alive, and name them if alive. If the parents are dead, they ought to indicate whether the deceased had brothers and sisters, and if so list them. If any of the brothers or sisters are dead, then indicate whether they had children of their own, and if so list them. Without such information, the court cannot possibly be satisfied that the administrator has properly ascertained the persons beneficially entitled to a share in the estate.
6. From the application before me, I am not satisfied that the applicant has ascertained the persons entitled to a share in the estate. I am not told whether the deceased was survived by a spouse, and if he was, who she was. If he was survived by children, who were they. If any of the children had died, I am not told who had died, and I am not told whether the dead ones were survived by any children of their own. I cannot, therefore, distribute the estate before that is done. The said application is hereby postponed. The applicant shall file a further affidavit, listing the categories of survivors of the deceased that I have mentioned in this ruling. Matter shall be mentioned thereafter.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF OCTOBER, 2021

W. MUSYOKA

JUDGE