

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 660 OF 2012

IN THE MATTER OF THE ESTATE OF ESAYA OTERA ASHIEMBI (DECEASED)

RULING

1. The deceased herein died on 17th November 1979. According to the letter from the Chief of Manyala Location, dated 7th November 2011, he died a polygamist, having married twice, and, therefore, his household comprised of two houses. His first wife was the late Norah Omunanga Washiemi, who had eight children, being Jackton Ngwara Isaya, the late Yusuf Okello Isaya, the late Harrison Wanyula Isaya, the late Simon Odera Isaya, the late Aggrey Mutakho Isaya, the late Samuel Ombuku Isaya, the late Peres Manyasi Isaya and the late Agneta Omurunga. The second wife was the late Anne Endeche Isaya, the mother of James Ochula Isaya and the late Thomas Amwoga Isaya. He is said to have died possessed of Marama/Shiatsala/523.

2. Representation to the estate was sought by Jackton Ngwara Isaya, in his capacity as son of the deceased. He listed only three individuals as surviving the deceased, that is to say himself, James Oluchula Isaya and Charles Odera Ombuku. He expressed the deceased to have died possessed of Marama/Shiatsala/523. Letters of administration intestate were made to him on 5th December 2012, and a grant was issued, dated 18th December 2012. The said grant was amended on 13th June 2013, to correct errors in spelling in the name of the administrator. The grant is yet to be confirmed, and there is a pending summons for confirmation of grant, dated 30th June 2014.

3. Jackton Ngwara Isaya died on 4th July 2014, according to the certificate of death on record, dated 13th August 2014. His death means that the grant made to him has become useless and inoperative. There is now a race to succeed him as administrator. There was an application filed on 18th September 2014, to that end, by James Oluchula Isaya, but he has also died. The current application is dated 11th November 2018. It is sought that the dead administrator be replaced with Michael Ombati Obati Ngwara, Frederick Ashiemi Oluchula and Charles Odera Ombaka. It is not clear, from the supporting affidavit, whose sons the proposed administrators are.

4. There is a reply to the application by Charles Odera Ombuku. He is one of the sons of one of the dead sons of the deceased, known as Samwel Stephen Ombuku. He avers that the deceased had six dead sons and one surviving son, Mutakho Isaya. He complains that the applicants were colluding to leave out some of the children of the other survivors.

5. When the matter was placed before me on 12th November 2019, I directed the parties to file affidavits to disclose all the grandchildren of the deceased. They did not comply, instead of filing affidavits as directed, they merely filed a list of grandchildren. The document only lists the children of three sons of the deceased, while the Chief's letter of 7th October 2011 had indicated that the deceased had ten children, the grandchildren from all ten children should have been listed.

6. I am unable to determine the application dated 11th November 2018, unless the applicants comply with my directions of 12th November 2019, by filing an affidavit in which they shall set out all the survivors of the deceased, by listing the number of wives that the deceased had, the number of children of each of the wives, whether dead or alive, and the names of all the grandchildren of the dead children of the deceased. There should be a disclosure of all the sons and daughters, and of all the surviving sons and daughters of the dead sons and daughters of the deceased. All those individuals mentioned in the Chief's letter should be disclosed, together with all their descendants. I shall only determine the matter after that full disclosure. It is so ordered. The matter shall be mentioned after thirty days for compliance and further directions.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 22ND DAY OF MAY, 2020

W. MUSYOKA

JUDGE