

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE & ADMINISTRATION NO.112 OF 2010

IN THE MATTER OF THE ESTATE OF:

LAWRENCE ONGOMA.....DECEASED

BETWEEN

1. JOHN FRANCIS MUYODI

2. PETER LUNANI ONGOMA.....CO-ADMINISTRATORS

RULING

1. The deceased herein died intestate.

2. Each of the co-administrator has proposed a rival mode of distribution. The proposal of John Francis Muyodi, claims that their sisters had indicated that they were not interested in the estate. In my perusal of the record, I did not see any document filed to that effect.

3. Form P. & A. 5 has listed nine beneficiaries. I would expect them to be provided for unless any one of them renounces his/her entitlement to inherit.

4. The family was expected to agree on the mode of distribution amongst themselves. This is the easiest way for it is only them who have the knowledge of the peculiar arrangements of their family. However, they have failed to agree. This will therefore mean that section 38 of the Law of Succession Act will apply in this case. It provides:

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.

5. I will therefore make an order that the estate shall be divided equally among the surviving children. In the course of distribution, any property that had been given to any beneficiary in the lifetime of the deceased and acknowledged to be so by the rest, shall not be available for distribution but it shall however be discounted in the entitlement of such a beneficiary.

6. If the list in form P. & A. 5 is correct and if none of the beneficiaries shall renounce their right to inherit, then the estate will be divided into nine equal shares.

7. The co-administrators are therefore given 30 days of this ruling to file the summons for confirmation of grant. If they fail to do so without an extension of time by the court, then the grant shall automatically be revoked.

DELIVERED and SIGNED at BUSIA this 30th day of September, 2020

KIARIE WAWERU KIARIE

JUDGE