



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

SUCCESSION CAUSE NO. 1691 OF 2016

IN THE MATTER OF THE ESTATE OF SAMUEL ODHIAMBO OGUK (DECEASED)

BETWEEN

IRENE SAMUEL ODHIAMBO.....1ST ADMINISTRATOR/APPLICANT

AND

DORINE ADHIAMBO ODHIAMBO.....2ND ADMINISTRATOR/PROTESTOR

JUDGMENT

1. Samuel Odhiambo Oguk, the deceased whose estate is in issue herein died domiciled in Kenya on 16th April, 2016. A copy of a Certificate of Death of serial number 0430979 is on record. A grant of letters of administration of his net intestate estate was on 17th July, 2017 made to Irene Samuel Odhiambo and Dorine Adhiambo Olaka.

2. On 14th March, 2018 the 1st Administrator Irene Samuel Odhiambo filed an application via summons dated 13th March, 2018 seeking that the grant issued herein be confirmed.

3. In the application filed in support of the summons, the 1st Administrator deposes that the deceased was survived by the following beneficiaries:

- a. Irene Samuel Odhiambo - 1st Wife
- b. Dorine Adhiambo Olaka - 2nd Wife
- c. Godfrey Onyango Oguk - Son
- d. Zedekia Allan Oguk - Son
- e. Kerry Oguk Brian - Son
- f. Christine Reynor Akoth Oguk - Daughter
- g. Faith Evelyn Adhiambo Oguk - Daughter
- h. Carolyn Atieno Oguk - Daughter

4. According to the affidavit, there is no pending application for provision of dependants and no estate duty is payable in respect of the deceased's estate. It stipulates the inventory of the deceased's assets as follows:

- a. Homestead – Bondo: South Sakwa/Bar-Kowino/3153
- b. Motor vehicle registration KAE 508 E Nissan Sunny

- c. Motor vehicle registration KBZ 945B Toyota Harrier
- d. Title No. MN/1/6633 NYALI-MOMBASA
- e. Title No. MOMBASA/M.N/BLOCK 1/92 – KIEMBENI MOMBASA
- f. BONDO TOWN: SOUTH SAKWA/BAR-KOWINO: 14097
- g. Homestead – Siage: South Sakwa/Bar-Kowino
- h. Siaya Property
- i. Bondo Town: South Sakwa/Bar-Kowino
- j. Ancestral land – Siage Village: South Sakwa Bar-Kowino
- k. Family land of Okeyo - South Sakwa/Bar-Kowino
- l. South Sakwa – Barkowino Parcel of land
- m. Money in Bank
- n. Livestock
- o. Pension – From Kenya Gazette
- p. Motor Vehicles: Registration KBA 001Y Mercedes Benz C 240

Registration KAQ 527W Peugeot 406

Registration KAM 967A Toyota Saloon

5. On 16th April, 2018 the 2nd Administrator Dorine Adhiambo Olaka filed an Affidavit of Protest sworn by herself against the confirmation of grant. In it, she asked the court to disregard the mode of distribution proposed by the 1st Administrator citing it as unjust, unfair and inequitable. She averred that the list of assets includes properties which do not belong to the deceased's estate and excludes L.R. No. 209/8989 Loresho Ridge which comprises the estate.
6. She asserted that her matrimonial home is on the property known as MN/1/6633-NYALI and her homestead is on the property known as BONDO: SOUTH SAKWA/BAR-KOWINO/3153. That as per the law, she is entitled to a life interest in the two (2) properties. Further that she is entitled to the Motor vehicle Registration No. KBZ 945B Toyota Harrier. She asked that the motor vehicle registration No. KBA 001Y Mercedes Benz C 240 be excluded from the list of assets since it is registered in someone else's name.
7. On 10th May, 2018 the 1st Administrator filed an affidavit sworn by herself on 8th May, 2018 in response to the Affidavit of Protest. In it she contended that she and the deceased purchased the subject properties before the 2nd Administrator came into their lives and the Affidavit of Protest is therefore bereft of substance. She urged the court to expunge the affidavit from the record and proceed to confirm the Grant of Letters of Administration in terms of the consent already filed.
8. Irene admitted that the motor vehicle registration number KBZ 945B Harrier is in the Protestor's name and does not therefore belong to the deceased's estate. She however opposed the Protestor's claim of a life interest in the properties known as MN/1/6633-NYALI and BONDO TOWN/SOUTH SAKWA/BAR-KOWINO/14097 stating that she and the deceased purchased the properties and developed them in 1990 and 1999 respectively, before the the deceased married the Protestor. Further that the property known as L.R. 8989, Loresho Ridge has never been in the deceased's name.
9. In response thereto, the Protestor filed a replying affidavit sworn by herself on 14th May, 2018. In it she deposed that she met the deceased in 1984 and they commenced cohabitation thereafter in 1985. She denied the averments that the suit properties were purchased and developed before she was married. She asserted that she had been married to the deceased since 1985 and was actively involved in the purchase and development of the properties.
10. On 16th April, 2018 the court referred the matter to the court-annexed mediation process. A Final Mediation Report dated 16th July, 2018 is on record. The report indicates that although the parties failed to reach a settlement, they agreed that both parties were wives of the deceased and entitled to inherit from the estate. Further that each wife should retain their respective rural homes in Bondo while the house in Nyalali should be sold.
11. On 1st October, 2018 the 1st Administrator filed an Affidavit sworn by herself on 27th September, 2018 in which she faulted the Mediation Report for inaccuracy. She contended that the report omitted the name of Brian Kerry Oguk, a son to the deceased, in the list of

attendees yet he was in attendance and participated in the mediation discussions; stated that the property known as L.R. No. 209/8989 Loresho was disposed after the deceased's death but failed to state whether or not it comprised the deceased's estate and failed to state that the Protestor collects a sum of Kshs. 160,000/= from the rental properties on the Nyali property.

12. The hearing of the matter commenced on 28th January, 2019 with the case of the 1st Administrator Irene Samuel Odhiambo. She gave sworn testimony in which she opposed the mode of distribution proposed by the 2nd Administrator and asked the court to distribute the deceased's estate as per her proposed mode of distribution.

13. According to the 1st Administrator, the bone of contention herein is in respect of the property in Bondo and the distribution of the proceeds from the sale of the Nyali property.

14. The 1st Administrator called two (2) witnesses in support of her case. Dr. Faith Oguk, the deceased's eldest daughter who testified as PWII and Brian Kerry Oguk, the deceased's youngest son who testified as PWIII. Both of them expressed their support for the mode of distribution dated 13th March, 2018 as filed by the 1st Administrator.

15. In opposition, the 2nd Administrator gave sworn testimony in which she asked the court to distribute the estate as set out in her proposed mode of distribution which is in accordance with the deceased's wishes.

16. It was the 2nd Administrator's testimony that she met the deceased in 1984 and they subsequently got married in 1988. Her statement which she adopted as her evidence however indicates that she married the deceased in 1985. She vehemently denied the allegations that she had been previously married to one Isaac from 1978 to 1984; one Azena who worked in Bamburi Mombasa from 1985 to 1986 and one Walter Ochila from 2005 to 2007.

17. The 2nd Administrator admitted that by the time she came into the deceased's life, all the properties comprising his estate had been acquired but stated that some of the properties had not been developed. She admitted that the property known as Bondo: South Sakwa/Bar-Kowino/3153 was transferred into her name in 2017 after the deceased had passed on but denied forging any documents to facilitate the transfer. Instead, she stated that the deceased had, before his demise, presented her particulars so that the title to the property would be issued in her name.

18. At the close of the 2nd Administrator's testimony, Mr. Oronga Advocate made an oral application seeking to have Mr. Vincent Kanyangonda summoned as a witness. The court consequently issued a ruling on 13th March, 2019 in which it held that having been extensively mentioned by both parties, it was necessary to call Mr. Kanyangonda as a witness to diffuse the stalemate with respect to the Loresho property.

19. Mr. Kanyangonda testified on 17th February, 2020 and told the court that the deceased was well known to him. He had known the deceased since the 1970's up until his passing in July 2016. He urged that he was privy to the deceased's dealings, particularly with respect to the property known as L.R. No. 209/8989 - Loresho Ridge.

20. On 6th July, 2020 learned Counsel Mr. Oronga filed written submissions dated 30th March, 2020 on behalf of the 2nd Administrator. Counsel asked the court to distribute the deceased's estate as proposed by the 2nd Administrator or in the alternative, in accordance with **section 40** of the **Law of Succession Act**. Counsel submitted that the only dispute hereto is with regard to what constitutes the deceased's estate and how the estate should be distributed amongst the beneficiaries.

21. According to Mr. Oronga, the mode of distribution proposed by the 1st Administrator is skewed and discriminatory against the 2nd Administrator since it only grants her three (3) properties out of the 19 properties comprising the deceased's estate. Further that the distribution fails to take into account the value of the respective properties to ensure equitable distribution.

22. Counsel contended that since the first house has six (6) children and a widow, the house should receive seven eighths (7/8) of each property constituting the deceased's estate whereas the 2nd house should receive an eighth (1/8) thereof. To buttress his point, Counsel cited the decision of Musyoka, J in **Succession Cause No. 1638 of 1993 In the Estate of Simon Ndungu Kihonge (deceased)**. He further asked the court to take into consideration that each house had two (2) matrimonial homes with the 1st Administrator having a house both in Sakwa Bondo and in Loresho, Nairobi and the 2nd Administrator both in Sakwa Bondo and in Nyali, Mombasa.

23. Mr. Oronga contended that by their actions of selling the Loresho property, the 1st Administrator and PWIII Brian Oguk intermeddled with the estate of the deceased contrary to the provisions of **section 45** of the **Law of Succession Act**. He urged that their actions were geared to defeat the interests of the other beneficiaries and accused them of seeking to possess the 2nd Administrator's Nyali home exclusively.

24. In opposition, learned Counsel Mr. Kaingu filed written submissions dated 2nd July, 2020 in which he urged the court to find that the mode of distribution proposed by the 1st Administrator is the acceptable mode of distribution in the intestate estate of the deceased.

25. Mr. Kaingu contended that the evidence on record demonstrates that at the time when the 2nd Administrator came into the deceased's life, the deceased and the 1st Administrator had already acquired all the properties comprising the deceased's assets.

26. The deceased herein died after the commencement of the **Law of Succession Act** his intestate estate is therefore governed by the provisions of the **Act** on intestacy succession.

27. From the record, it is evident that the beneficiaries of the deceased's estate have been identified and ascertained. What is left for this court to determine is which assets constitute the deceased's net intestate estate and how they ought to be shared amongst the deceased's beneficiaries.

28. Both the 1st and 2nd Administrators filed proposals of how they wish the estate of the deceased to be shared. The proposals are largely similar. I note that there is consensus on how some of the assets comprising the deceased's estate ought to be distributed. In deliberating this matter therefore the court will limit itself to the properties whose ownership and distribution is not agreed between the parties namely:

- a. L.R. No. 209/8989 Loresho Ridge.
- b. MN/1/663 – Nyali Mombasa
- c. Bondo Town: South Sakwa/Bar-Kowino: 14097
- d. Monies held in A/c No. 1101585048 in Kenya Commercial Bank, Moi Avenue Nairobi
- e. Monies held by Madison Insurance
- f. Household effects in the Mombasa house, Nairobi house, Siage Village homestead and Bondo homestead.
- g. Livestock
- h. Pension from the Government of Kenya.

L.R. No. 8989 Loresho Ridge Property

29. In her oral testimony, the 1st Administrator contended that she and the deceased lived on the Loresho property from 1995 until 2003 when the deceased lost his job, prompting them to move to another house. She contended that the property was never owned but was merely rented by the deceased. In 2004, the deceased moved back to Mombasa while she stayed on in Nairobi. She rented a house in Loresho where she stayed until 2016 when her son Brian Kerry Oguk took over the house.

30. Her sentiments were echoed by Brian Oguk who testified that the property belonged to an Asian and thereafter to one Mr. Kanyangonda, who was the deceased's friend. That the deceased and Mr. Kanyangonda had bought the property in equal shares since the deceased could not afford to pay for it entirely.

31. It was Brian's statement that in August 2015, the property was transferred to him by Mr. Kanyangonda upon payment of a small amount to complete the transaction. That the deceased was aware of the transaction but did not at any point inform him that he was to hold the house in trust for anyone.

32. However, to the 2nd Administrator's knowledge, the Loresho property belonged to the deceased. She asserted that the deceased had told her that he acquired the property since his first family preferred to stay in Nairobi as opposed to Mombasa. Whenever the deceased visited Nairobi, he too would stay at the house. She noted that the deceased however acquired the house in the name of his friend and trustee one Mr. Vincent Kanyangonda. She alluded to being in possession of documentary evidence in support of her claim but upon cross-examination stated that it was only Mr. Kanyangonda who would be in possession of any such documentation.

33. According to Mr. Kanyangonda, it is he who bought the Loresho property and it was transferred to him on 14th August, 2001. He held the property for 13 years until 2013. On 6th August, 2013 he received a letter from the deceased instructing him to transfer the property to the deceased's family members. By that letter, the deceased had also appointed Mr. Kanyangonda and three others as administrators of his estate should he pass on. A copy of the letter thereof is on record.

34. Mr. Kanyangonda also testified that the deceased had instructed him to transfer the property to his youngest son Brian Oguk, and that Brian was to give him a token of Kshs. 50,000/= and meet all the transfer expenses.

35. It was Mr. Kanyangonda's contention that he bought the house with the agreement that he would transfer it to the deceased upon his paying some consideration and their reconciling their accounts. The title has however never been in the deceased's name. The title was previously in the name of Kamwe Ltd. before it was transferred into the name of Mr. Kanyangonda and later into the name of Ken Oguk and Irene Oguk on 21st August, 2015. He admitted being in receipt of a sum of Kshs. 50,000/- paid to him by Brian Oguk but stated that the money was paid in compliance with the deceased's wishes and not to purchase the property.

36. Submitting on this, Mr. Oronga drew attention to the testimony of Mr. Kanyangonda particularly that he was the previous registered owner of the property and that he held the property in trust for the deceased. Counsel contended that having stated that no money was paid to him as a purchase price, a fact that remains uncontroverted, the court should hold that the property comprises the deceased's estate even though not registered in the deceased's name.

37. On this, Mr. Kaingu submitted that an interest in property cannot be alienated through a letter as purported in the letter dated 6th August, 2013 attached to the 2nd Administrator's affidavit of 14th May, 2018 and marked as annexure "DAO3". That in any case, the title to the property was never in the deceased's name. Counsel urged that the deceased cannot therefore be said to have given the property to Brian

Oguk when it was never his to begin with.

38. Both parties and their respective witnesses raised extensive issues with respect to the Loresho property. I note however that in the instant case, the testimony of Mr. Kanyangonda is what is most reliable. The evidence led by both parties hereto suggests that the purchase of the property was a joint venture between the deceased and Mr. Kanyangonda since the deceased could not afford to pay the entire purchase price. Additionally, there is consensus that it is Mr. Kanyangonda who effected the transfer of the property.

39. While the 1st Administrator's case is that the deceased could not purport to grant the property to Brian Oguk, it is noteworthy that Brian Oguk only paid a sum of Kshs. 50,000/= before the transfer was effected, which sum the recipient Mr. Kanyangonda insists was not the purchase price.

40. The 1st Administrator insisted that the property never belonged to the deceased. While advancing this argument, she told the court that the house was rented out but that she had never paid rent to the landlord in person. She stayed in the house until 2016 when her son Brian Oguk took it over. However, the testimony of PWIII Brian Oguk tells a different story.

41. According to Brian, the deceased and Mr. Kanyangonda each paid half the amount towards the purchase price of the property because the deceased could not solely afford it. Further that his payment to Mr. Kanyangonda, which he termed a small amount, was to complete what his father could not.

42. Without more, this court can only find that the property was transferred into the names of Brian Kerry Oguk and that of the 1st Administrator upon instruction by the deceased. Whereas the letter dated 6th August, 2013 is not a will it lends credence to this version of the story. It is curious that the 1st Administrator vacated the house in 2016 which is when the deceased died.

43. Based on the foregoing, the court finds that the property known as L.R. No. 209/8989 - Loresho Ridge belonged to the deceased but was gifted *inter vivos*. As such, even though it was sold after the deceased's death, the action does not amount to intermeddling as alleged by the 2nd Administrator. The court will nonetheless take this into account as a previous benefit in line with **section 42 of the Law of Succession Act** in distributing the deceased's estate.

Title No. MN/1/663 – Nyali Mombasa

44. It was the 1st Administrator's statement that all the beneficiaries were agreeable to the sale of the Nyali property but that the 2nd Administrator was opposed to having the proceeds shared equally. Instead, the 2nd Administrator proposed that the proceeds be divided into two halves in the first instance, one half for each house.

45. The 1st Administrator's witnesses nonetheless submitted extensively on the events leading up to the development of the Nyali property. PWII Dr. Faith Oguk could not confirm when the property was acquired, but stated that in 1995, she and her siblings accompanied the deceased to a site in Nyali. The deceased was working in Mombasa at the time. Thereafter, they spent all their weekends at the site assisting with the construction works.

46. Dr. Oguk refuted the 2nd Administrator's claims of having lived in the Nyali house since 1999 stating that the deceased lived alone with a cook known as Owino. She stated that although she studied in Europe she would visit the home occasionally when in Kenya. In 2006 she returned to Kenya and lived in the house for a period of three (3) months. That it was not until 2007 that she first encountered the 2nd Administrator.

47. According to Dr. Oguk, the Nyali property underwent a change of user from residential to commercial during the deceased's lifetime. Thereafter, the deceased put up a second house within the main compound and shops along the road. She averred that at the time, the deceased was in need of extra money for his medication since his health was failing. She did not know when the shops were constructed or who collects the rent therefrom but stated that the construction began after 2007.

48. Her sentiments were echoed by Brian Oguk who testified that the Nyali house was constructed in 1995. He was a standard 5 pupil at Aga Khan Primary School at the time. The deceased would pick him up from school to visit the site. Whenever the deceased had Judiciary conferences in Mombasa, PWIII would accompany him and they would stay at the house during the weekend. Further that from 2001 to 2006, he and his friends would buy vegetables from Kinangop to sell in Mombasa and they would often stay in the Nyali house. All this while, he had never seen the 2nd Administrator at the house.

49. Brian asserted that the deceased built shops along the road on the Nyali property in his retirement since he needed the rental income for his medical bills. To his knowledge, the shops were built in the period between 2004 and 2006 with improvements going on after 2007.

50. On her part, the 2nd Administrator stated that she did not know when the deceased acquired the Nyali property, but that construction thereon began in 1995. At the time, she lived in Shanzu area in houses belonging to Mombasa Water Company. No one lived on the premises while construction was ongoing. That it was however upon completion of the construction in 1999 that she moved into the house.

51. The 2nd Administrator contended that it was she who built the shops on the property in 2014 after obtaining a letter from the County Government. The shops are inside the compound of the premises. She receives an average of Kshs. 95,000/= monthly as rental proceeds from the premises. She started collecting the rent in 2015 while the deceased was still alive. The proceeds thereof go towards the payment of workers and towards the construction of her home in Bondo where she is building a maisonette.

52. Whereas the parties have submitted extensively on the date of acquisition of this property, at this time, it is only for this court to determine whether or not it was utilized by the 2nd Administrator as her matrimonial home so as to support her claim of a life interest therein, or whether it ought to be sold and the manner in which the proceeds thereof ought to be shared.

53. From the evidence led by the parties, the court gathers that the 2nd Administrator lived with the deceased on the property for a period of at least nine (9) years before his demise. This is so at least in the view of the 1st Administrator whose case is that the 2nd Administrator came into their lives in 2007. The 2nd Administrator's evidence as to when she met the deceased was notably unreliable. In her written statement dated 5th November, 2018 she indicated that she and the deceased started cohabiting as husband and wife in 1984 whereas in her oral testimony she stated that they got married in 1988.

54. Mr. Kaingu submitting on behalf of the 1st Administrator contended that this property cannot be available for distribution to the 2nd Administrator by dint of **section 8** of the **Matrimonial Property Act No. 49 of 2013**. Further that the property was purchased and developed by the deceased and the 1st Administrator before the 2nd Administrator came into the picture.

55. I note that the provisions of the **Matrimonial Property Act** are inapplicable in these proceedings since it provides the law on division of matrimonial property and declaration of rights with respect to matrimonial property, while these proceedings are in relation to succession. The cited **section 8** clearly stipulates that it applies in divorce and dissolution of a marriage.

56. While it is uncontroverted that all of the deceased's properties were acquired before the 2nd Administrator was married, the evidence suggests that she had a role to play in the development of the Nyali property. In any event, none of the parties led evidence as to how the property was acquired, or their contribution towards its acquisition or development.

57. The Final mediation report indicates that the parties agreed upon the sale of the Nyali property. Further that the 1st Administrator wanted the proceeds of the sale shared equally amongst all the eight (8) beneficiaries while the 2nd Administrator proposed that the proceeds be split into two halves, between the First and Second house.

58. It is uncontroverted that the 2nd Administrator lived with the deceased on the Nyali property. Additionally, from the evidence led hereto the court is convinced that it was she who constructed the shops thereon and from which she collects rent monthly.

59. Based on the foregoing, the court is inclined to find that the Nyali property be sold and that the proceeds thereof be divided into two (2) halves, one for each house. In the alternative, upon valuation of the property, one house shall be at liberty to buy out the other's interest in the property.

Bondo Town: South Sakwa/Bar-Kowino: 14097

60. The 1st Administrator's statement with respect to this property was that it comprises three (3) houses, each with two (2) units. That the deceased had intended that the units devolve to their six (6) children and urged the court to distribute them as such. She urged that she and the deceased bought the property in 1999 as bare land and thereafter constructed the houses thereon.

61. The 1st Administrator admitted that her co-administrator stayed in one of the units on the property in 2008 but denied knowledge of the fact that after moving out of the house, she collected rent from it. Instead, she stated that it was the deceased who collected rent therefrom.

62. Dr. Oguk echoed the 1st Administrator's sentiments. She told the court that while she was still in medical school, the deceased had upon his return from a conference in Windhoek, sat her and her siblings down and told them that the units belonged to the six of them. That since the houses are in pairs, the deceased paired them as follows:

- a. Godfrey Oguk and Dr. Faith Oguk (herself).
- b. Zedekiah Allan Oguk with Christine Reynor Akoth Oguk.
- c. Brian Kerry Oguk with Carol Atieno Oguk.

63. It was Dr. Oguk's statement that all the six (6) units have tenants. During the deceased's lifetime, one Mr. Achieng' would collect the rent and send it to the deceased in Mombasa. After the deceased died, her family opened an account in I&M Bank Limited for the monthly rental deposits. The rental income goes towards the 1st Administrator's upkeep and dialysis treatment, the upkeep of her Aunt Grace in Yala and the salary of the Caretaker in their village home.

64. Her testimony found support in that of Brian. He asserted that during his lifetime, the deceased would collect the rental income from the units and send it to him and his siblings for upkeep. After the deceased's death, they opened a joint account to which the tenants deposit their rent. He admitted that the 2nd Administrator had at some point lived in one of the units and collected the rent from five of the units.

65. The 2nd Administrator did not testify with regard to this property. However, according to Mr. Kanyangonda, the deceased constructed the units on the property as an investment.

66. The evidence adduced by the parties and their respective witnesses paint the deceased as a man who wanted to ensure that his two wives and children had something to fall back on. He was intentional in his actions with respect to his properties.

67. From the testimony of the 1st Administrator and those of her children, PWII and PWIII, it is more probable than not that the units were intended for his children. In any case, each one of the wives had a home of their own in Bondo. As such, the property shall devolve to the 1st Administrator absolutely in the first instance to hold a life interest. It shall thereafter devolve to the deceased's children equally.

Household Effects

68. Where an intestate was polygamous as in this case, **section 40** of the **Law of Succession Act** provides that the personal and household effects shall, in the first instance, be divided among the houses according to the number of children in each house but also adding any surviving wife as an additional unit. Thereafter, the distribution proceeds in accordance with the provisions of **section 35 to 38** of the **Act**. Under these sections, a surviving spouse is entitled to all the personal and household effects of the deceased absolutely. I therefore find that both the 1st and 2nd Administrators are entitled to the household effects in their respective houses absolutely.

Monies held in Bank Account and by Madison Insurance; Livestock; Government Pension

69. To ensure fair distribution of these assets, I am guided by the provisions of **section 40** of the **Law of Succession Act**. The deceased had two (2) wives and six (6) children each of whom will be treated as a single unit. As such, the deceased's estate comprises of eight (8) units.

70. The monies held at KCB Bank and Madison Insurance, livestock and the deceased's pension shall therefore be shared between the first and second house based on the number of units in each house. The first house will receive seven-eighths (7/8) while the second house will receive one-eighth (1/8) thereof.

Determination

71. I take cognisance of the progressive argument advanced by Mr. Kaingu particularly that **section 40** of the **Law of Succession Act** is a discriminatory provision of the law and to apply it in this case would prejudice the 1st Administrator since all the deceased's properties were acquired before the 2nd Administrator was married. To buttress his argument, he cited the decision of Mumbi Ngugi, J in **Re Estate of the Late George Cheriro Chepkosoi (deceased) [2017] eKLR** in which the learned Judge stated that the discrimination can only be properly addressed by considering the contribution of the widow to the property, and taking this contribution into account when determining what she is entitled to in a succession cause to the estate of a polygamous deceased person who dies intestate.

72. From the respective modes of distribution proposed by the parties, and the evidence on record, it is evident that there is consensus as to how some of the assets comprising the deceased's estate ought to be distributed. With respect to these assets, the court will adopt the proposed mode of distribution. It is noteworthy that the 1st Administrator's house is proposed to receive a larger share of these assets. As such, Mr. Kaingu's argument that 1st Administrator will be prejudiced by the distribution is unfounded.

73. In the end, I direct that the estate of the deceased be distributed as follows:

| No. | Property | Beneficiary | Share |
|-----|--|--|------------------------|
| 1. | Bondo South Sakwa/Bar-Kowino/3153 (Homestead) | 1 st House | Whole |
| 2. | Mombasa/M.N/Block 1/92- Kiembeni – Mombasa | 1 st House | Whole |
| 3. | Sale Proceeds from MN/1/6633 – Nyali Mombasa | 1 st House 2 nd House | 1/2 Share 1/2 Share |
| 4. | Bondo Town: South Sakwa/Bar-Kowino: 14097 Block – House – A Block – House – B Block – House – C | 1 st House | Whole |
| 5. | Siage: South Sakwa/Bar-Kowino (Homestead) | 1 st House | Whole |

| | | | |
|-----|---|--|------------------------|
| 6. | Siaya Property | 1 st House | Whole |
| 7. | Bondo Town: South Sakwa/Bar Kowino (near Oginga Odinga University) | 1 st House | Whole |
| 8. | Ancestral land Siage Village: South Sakwa – Bar-Kowino | 1 st House | Whole |
| 9. | Family land of Okeyo South Sakwa/ Bar Kowino | 1 st House | Whole |
| 10. | South Sakwa/Bar-Kowino (along Bondo Road – Bar Kowino) | 1 st House | Whole |
| 11. | Monies held in Kenya Commercial Bank, Moi Avenue Nairobi A/c No. 1101585048 | 1 st House 2 nd House | 7/8 share 1/8 share |
| 12. | Money held by Madison Insurance Company | 1 st House 2 nd House | 7/8 share 1/8 share |
| 13. | Livestock | 1 st House 2 nd House | 7/8 share 1/8 share |
| 14. | Pension from Kenya Government | 1 st House 2 nd House | 7/8 share 1/8 share |
| 15. | Motor Vehicles Registration: KBA 001 Y – Mercedes Benz : KAQ 527 W – Peugeot 406 : KAM 967 A – Toyota Saloon | 1 st House | Absolutely |
| 16. | Motor Vehicle Registration: KAE 508 E – Nissan Sunny | 2 nd House | Absolutely |
| 17. | Household effects | Each party | Absolutely |

| | | | |
|--|--|--|--|
| | | In their respective houses absolutely. | |
|--|--|--|--|

74. For purposes of clarity, upon the valuation of the Nyali property, in alternative to its sale, one house shall be at liberty to buy out the other's interest in the property.

75. The 1st Administrator shall hold a life interest in the properties by dint of **section 35** of the **Law of Succession Act** whereas the 2nd Administrator shall hold a life interest in the properties assigned to her in accordance with **section 36** of the **Act**. It is so ordered.

DATED SIGNED AND DELIVERED IN VIRTUAL COURT THIS 28TH DAY OF SEPTEMBER, 2020.

L. A. ACHODE

HIGH COURT JUDGE

In the presence of.....Advocate for the 1st Administrator.

In the presence of.....Advocate for the 2nd Administrator.