



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 329 OF 2018**

**IN THE MATTER OF THE ESTATE OF JOHN MWAURA NDUNGU alias JOHN MWAURA NDUNG’U (DECEASED)**

**RULING**

1. The Deceased herein died testate on 13<sup>th</sup> December 2017. He left behind a written Will dated 1<sup>st</sup> August 2017 in which he appointed his wife Esther Nguhi Ndungu as the sole executrix. The assets comprising the estate were bequeathed to various beneficiaries under the said will. On 15<sup>th</sup> March 2018, the executrix petitioned for grant of letters of probate with will annexed. The same was granted and issued on 13<sup>th</sup> July 2018.

2. Subsequently, the executrix filed an application dated 4<sup>th</sup> June 2020 seeking confirmation of the grant. She then sought to have the estate distributed as per a deed agreement signed by beneficiaries. Under the said deed, they sought variation of the will regarding distribution of the estate and instead proposed a fresh mode of distribution in which they urged the court to distribute the estate equally. The application is premised upon grounds on the face of it and affidavit in support sworn by the applicant.

3. I have considered the application herein and the affidavit in support. The grant of probate was issued on 13<sup>th</sup> July 2018. Since then, six months have lapsed without any objection being filed. In the circumstances, the grant of probate with will annexed is hereby confirmed. Regarding distribution of the estate, the will is clear. Its validity has not been challenged. A will is a legal expression or declaration of a testator’s wishes on how he or she wishes or desires to have his or her property shared out after his or her death.

4. The will herein is unequivocally clear and no other construction can be drawn other than to execute the intention of the testator. The role of the court is to construe the will to ascertain the intention of the maker and enforce the same (**see Re Raphael: Public Trustee v Raphael (1972) EA 522**). The deed of agreement between beneficiaries to distribute the estate equally amongst themselves is intended to alter, rewrite or revoke the will.

5. It is my finding that I do not find any reasonable ground to interfere with the wishes of the deceased which is clearly expressed in the will. Accordingly, the grant is hereby confirmed and the estate to be shared out as proposed by the deceased in the written will dated 1<sup>st</sup> August 2017.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2020.**

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**J. N. ONYIEGO**

**JUDGE**