



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

FAMILY DIVISION

SUCCESSION CAUSE NO. 126 OF 2016

**IN THE MATTER OF THE ESTATE OF MALION NYAKERU NDIGUTHA ALIAS MARION NYAKERU NDIGUTHA
(DECEASED)**

RULING

1. This is a ruling relating to a protest raised towards the confirmation of grant by Harrison Ndigoitha Nyakeru one of the two sons of the deceased herein Malion Nyakeru. The mover of the application for confirmation of grant is the other son of the deceased James Ndara Nyakeru.
2. The deceased died on the 2nd on January 2009 and on the 28th of June, 2017 her two sons; James Ndara Nyakeru and Harrison Ndigoitha Nyakeru petitioned for grant of Letters of administration which grant was issued to both of them as co-administrators on the 13th December, 2017.
3. In a letter dated 5th September, 2017 the Chief of Lemelepo Location in Kiserian affirmed that the two were the only heirs of the deceased who was never married.
4. In the application for confirmation of grant James Ndara Nyakeru proposed that the only asset of the estate being Ngong/Ngong/10983 be shared equally between him and his brother Harrison Ndigoitha Nyakeru. The property is 0.405 Ha.
5. Harrison Ndigoitha was not in agreement and he filed an affidavit of protest based on grounds that his brother and the deceased were not on good terms; he single handily took care of his mother and that the applicant had in the year 2010 agreed to have only a ¼ portion of the land in a meeting held at the chief's.
6. The applicant refuted the allegations of having fallen out with his mother stating that differences if any had been sorted out; he further denied ever relinquishing his interest as alleged; and disowned the chief's letter alleging that he signed the same without reading the content.
7. The law on how property of a deceased is to be shared where the deceased leaves children behind and no spouse is spelt out in Section 38 of the Law of Succession Act as follows:

” where an intestate has left a surviving child, or children but no spouse the net intestate shall subject to the provisions of section 41 and 42 devolve upon the surviving child if there be only one, or be equally divided among the surviving children.”
8. The accusation by the protestor was not proved save for a letter dating back to 2004 where the deceased and the applicant had differences. The authenticity of the chief's letter was not established either. In any case a chief's letter where there is disagreement on its content cannot alter the law, neither the allegation of neglect of the deceased by the Applicant needless to say that though it is expected in an African set up and it is indeed noble of children to respect and take care of their parents, where a deceased dies intestate the law does not put any conditions that would otherwise disentitle equal inheritance amongst the deceased children.
9. Consequently, based on the law the protest dated the 19th of February, 2020 fails.
10. The grant be and is hereby confirmed in line with paragraph 6 of the affidavit in support of the application. Property L.R. No. Ngong/Ngong/10983 be shared equally between the two.
11. Either of the two administrators be at liberty to follow up the subdivision and eventual issuance of titles. The cost of the subdivision be borne by both parties equally.

12. Each party to bear their own legal costs.

DATED, SIGNED and DELIVERED at NAIROBI this 17th DAY OF SEPTEMBER 2020.

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ALI-ARONI

JUDGE