



**REPUBLIC OF KENYA**

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

**PROBATE & ADMINISTRATION NO.12 OF 2000**

**IN THE ESTATE OF:**

**RAPHAEL ESAIRE PAPAOK.....DECEASED**

**BETWEEN**

**MANEYA ECHAKARA ESAIRE**

**MOSES GAUNYA ESAIRE.....APPLICANTS**

**AND**

**PERESI ALUNGA ESAIRE**

**LIDIA AKWARA ESAIRE.....RESPONDENTS**

**RULING**

1. Maneya Echakara Esaire and Moses Gaunya Esaire the applicants herein filed an application dated 8<sup>th</sup> October 2015 under sections 47 & 74 of the Civil Procedure Act and Rules 43, 63 & 73 of the Probate and Administration Rules. They are seeking orders as follows:

- a) That this Honourable Court be pleased to correct and or review its ruling which was delivered on 1<sup>st</sup> October 2015 to reflect the correct, number of children of the 3<sup>rd</sup> petitioner/ applicant and that the first house has 11 units.
- b) That after such a review, the remainder of the deceased's estate be subdivided equally among 17 units instead of 16.
- c) That the costs be in the cause.

2. The application was premised on grounds that I have summarized as follows:

- a) That the deceased was survived by 15 children and two widows.
- b) That the Honourable court distributed the estate among 14 instead of 15 children.

3. The application was opposed by the other two co-petitioners on grounds that it seeks to have the matter heard afresh.

4. Though the applicants have erroneously cited the provisions of the Civil Procedure Act, their application is saved by dint of Rule 73 of Administration and Probate Rules that provides:

***Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.***

5. In spite of opposing the application the applicant, Peresi Alunga Esaire, has agreed with the applicants on the number of the children the deceased left behind. I agree with the submissions by the counsel for the 3<sup>rd</sup> and the 4<sup>th</sup> petitioners who are the applicants herein that the other petitioners misunderstood the application. All the applicants are seeking is the inclusion of the beneficiary who was left out.

6. I am satisfied that the application is merited. I therefore make an order for the rectification sought. There will therefore be 17 units. The

estate will therefore be distributed in accordance with the formula of equal distribution as provided under section 40(1) Of the Law of Succession Act. The ruling which was delivered on 1<sup>st</sup> October 2015 is amended to cater for 17 units, where the learned judge had applied 16 units as the denominator.

7. The parties will have 60 days from the date of this ruling to give a full and accurate account of the completed administration as provided for under section 83(g) of the Law of Succession Act.

8. Each party to bear own costs.

**DELIVERED and SIGNED at BUSIA this 25<sup>th</sup> day of February 2019**

**KIARIE WAWERU KIARIE**

**JUDGE**