

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

PROBATE & ADMINISTRATION NO. 21 OF 2006

IN THE MATTER OF THE ESTATE OF:

WANZALA MUCHONGO.....DECEASED

BETWEEN

HENRY EGESA WANZALA.....PETITIONER

AND

RODGERS OMBALE MAGINA.....OBJECTOR

ACK NASIRA.....INTERESTED PARTY

RULING

1. The parties herein are disputing on the mode of distribution of the estate. According to the proposal by the petitioner who is a son of the deceased herein, the approach he has adopted is what the deceased had distributed among his sons during his lifetime. Some other portion of land had been sold to the Anglican Church of Kenya, Nasira, Nasira Primary School and Nasira Polytechnic.
2. Rodgers Ombale Magina, the objector herein is a grandson of the deceased. His contention is that he was not considered for the upper commercial part of the estate.
3. According to the petitioner, the deceased herein subdivided his land between his four sons who included the father of the objector. This was long before the objector was born. There is no evidence that the father of the objector had protested to his father's (the deceased herein) mode of distribution.
4. There is evidence on record and which the objector did not respond to; that he had sold part of his father's share to two people. This is an indictment on the objector that he is being propelled by greed and not in pursuit of fairness.
5. Where a deceased person has distributed his estate during his lifetime, as long as he has not disinherited any of his heirs, we cannot question as to why he did not give out equal shares. He knew his children and the rationale for the distribution was only known to him.
6. Evidence at the disposal of the court favour the proposed distribution by the petitioner. This proposal agrees with section 40 of the Law of Succession Act which states:

(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.

7. I hereby confirm the same and give the petitioner 6 months within which to distribute the estate and come back to court to render accounts. Failure to comply, the grant will automatically be revoked unless extension of time has been sought.

DELIVERED and SIGNED at BUSIA this 30th day of April, 2019

KIARIE WAWERU KIARIE

JUDGE