



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 307 OF 2006**

**IN THE MATTER OF THE ESTATE OF THE PETER CHARLES NDERITU – DECEASED**

ANGELA WAMBUI NDERITU.....APPLICANT

VS

JOHN KANG'ETHE NDERITU.....1<sup>ST</sup> RESPONDENT

FLORENCE AUMA NDERITU.....2<sup>ND</sup> RESPONDENT

ELIZABETH WARIARA NDERITU.....3<sup>RD</sup> RESPONDENT

**RULING**

1. The Administrator of the Estate of the Deceased herein filed a Summons for Confirmation dated 15.12.2015 in accordance with the Judgment of this Court dated 28.8.2015.
2. The Objector FLORENCE AUMA NDERITU filed an objection dated 14.6.2016 on the grounds that the Administrator did not seek her consent and further that some properties of the Estate previously available for distribution from the Affidavit of the previous administrators have been left out.
3. Further, that the former Administrator, ELIZABETH WARIARA NDERITU has not filed in Court a full and accurate inventory of the Estate from 2006 – 2015 as per the order of the Court dated 28.8.2015.
4. The Court on 28.8.2015 gave explicit orders which have not been complied with.
5. I direct that the former Administrator files a report as directed by the Court so that it is clear what properties are available for distribution.
6. The Court directed that Property No. LR 7741/286 will be subject to 2 siblings; ANGELA & JOHN NDERITU in equal shares and further that JOHN NDERITU to be at liberty to give up his share to any of the other beneficiaries.
7. LR 7741/285 is not available for distribution as the same had been transferred to MARTIN MATHENGE (Deceased's) family inter-vivos.
8. In **Re Estate of The Late GedionManthiNzioka (Deceased) [2015]eKLR** which was relied on by the petitioners, Nyamweya J stated as follows:

***“In law, gifts are of two types. There are the gifts made between living persons (gifts inter vivos), and gifts made in contemplation of death (gifts mortis causa). Section 31 of the Law of Succession Act provides as follows with respect to gifts made in contemplation of death:***

***...For gifts inter vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trusts or the presumption of Gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be complete for the same to be valid.”***

9. Even though in the final orders the court directed that the suit property that is LR. 7741/286 is part of the Estate available for distribution, the court had earlier in the Judgment determined that the said property shall be “**subject to two siblings:ANGELA NDERITU & JOHN NDERITU in equal shares**” and the court even stated that JOHN NDERITU is at liberty to give up his share to any of the other beneficiaries.

10. I accordingly direct that the mode of distribution be amended accordingly to take into account the said orders.

11. I also direct that the former administrator files an accurate inventory as directed within 30 days of this dated and the same will show the properties available for distribution.

12. Summons for Confirmation also to proceed after the 30 days to enable the former Administrator to file the inventory.

13. The Case will be mentioned on 20/1/2020 for Confirmation of grant.

**DELIVERED,DATED AND SIGNED IN OPEN COURT THIS 29<sup>TH</sup> DAY OF NOVEMBER, 2019**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI.**