



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 542 OF 2009
IN THE MATTER OF THE ESTATE OF S J O (DECEASED)

RULING

1. On 3rd February 2017 I delivered a ruling herein wherein I directed the administrators to file a summons for confirmation of grant to provide basis for the making of orders on distribution of the estate as per the schedules of distribution filed by them previously. One of the administrators, Z A O, has complied with that order by filing an application for confirmation of grant dated 3rd February 2017.

2. The deceased had married twice, and he was therefore survived by two widows and children. According to the letter of the Chief of East [particulars withheld], dated 7th April 2009, the first widow is known as G A O and has three children, being B O O, R A O and R O O. The other widow is Z A O and her three children are T J O, K W O and F D O.

3. He is said to have died possessed of the following assets-

- (a) Uholo/Sigomere/[particulars withheld];
- (b) Ngong/Ngong/[particulars withheld];
- (c) LR No. [particulars withheld];
- (d) Motor vehicles registration marks and numbers KAH [particulars withheld], KAA [particulars withheld] and KAG [particulars withheld];
- (e) Shares in National Bank of Kenya Limited, Mwalimu Sacco Limited, E-Net Work Limited and Safaricom Limited;
- (f) Money in accounts with Standard Chartered Bank, K-Rep Bank and National Bank of Kenya; and
- (g) Proceeds from the JKUAT Staff Pension Scheme;

4. His estate is said to have the following liabilities-

- (a) Unpaid funds to a contractor;
- (b) Land rates and rent in respect of LR No. [particulars withheld];
- (c) Debt to newspaper vendor; and

(d) Costs or expenses relating to motor vehicle KAG [particulars withheld].

5. Two rival proposals on distribution have been placed before the court. The first proposal is by the first and second administrators, Z A O and F B A, dated 28th September 2015; while the second is by the 3rd administrator, G A O, dated 23rd October 2015.

6. In the first proposal the estate is distributed as follows-

- (a) Uholo/Sigomere/[particulars withheld] – to Z A O, for herself and in trust for her children;
- (b) Uholo/Sigomere/1194 – to Brian Oduor, to be held for him by P A O, for he is a child with special needs;
- (c) Uholo/Sigomere/[particulars withheld] – to G A O, in trust for her two children;
- (d) Ngong/Ngong/[particulars withheld] – to Z A O, for herself and her children
- (e) LR No. [particulars withheld]– to Z A O, for herself and her children;
- (f) National Bank of Kenya Limited shares – to B O O, R A O and R O O;
- (g) Safaricom Limited shares – to T J O, K W O and F D O;
- (h) Mwalimu Sacco shares – to B O O, R A O and R O O;
- (i) Proceeds from the JKUAT Staff Pension Scheme – to B O O, R A O and R O O;
- (j) Money in Standard Chartered Bank – to T J O, K W O and F D O;
- (k) Money in National Bank of Kenya Limited – to B O O, R A O and R O O;
- (l) KAH [particulars withheld] – to Z A O;
- (m) KAA [particulars withheld] – to P A O; and
- (n) KAG [particulars withheld]– to G A O.

7. In an affidavit sworn on 28th September 2015, the first administrator has given a background to her proposals. She has stated that the deceased had married or was associated with several women. What is definite is that he married two, herself and G A O. The marriage with G A O produced two children, R A O and R O O, but ultimately the marriage was dissolved without division of matrimonial property. Her own marriage with the deceased produced three children, T J O, K W O and F D O, and subsisted until the deceased's death. It would appear that the deceased also had a child, B O O, with a P A O, whose status is unclear, the child, now an adult, is said to have special needs. She contends, with documentary support, that most of the assets were acquired only after the deceased married her.

8. The proposal by the 3rd administrator is as follows -

- (a) Uholo/Sigomere/[particulars withheld] – to G A O, in trust for her two children;
- (b) Uholo/Sigomere/[particulars withheld] – to R A O and R O O;
- (c) Uholo/Sigomere/[particulars withheld] – to R A O and R O O;
- (d) Ngong/Ngong/[particulars withheld] – to Z A O, for herself and her children

- (e) LR No. [particulars withheld] – to all the six children of the deceased;
- (f) All the shares in various companies and firms – to all the six children of the deceased equally;
- (g) Proceeds from the JKUAT Staff Pension Scheme – to all the six children of the deceased;
- (h) Money in the bank accounts – to all the six children of the deceased; and
- (i) All the motor vehicles – to Z A O.

9. In her affidavit in support of the proposed distribution, she asserts to be the first wife, and argues that under customary law she should be entitled to all the upcountry property. She states that the first administrator has not supplied any proof that she had contributed to the acquisition of the subject property. Curiously, she has not adverted to the averment that she had been divorced by the deceased, and neither has she addressed herself to the claim that the entire estate was acquired after she separated from the deceased.

10. The proviso to section 71(2) and the provision in Rule 40(4), which is relevant to what is now before me, provides as follows –

‘71(2)(2A) ... Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed the grant shall specify all such persons and their respective shares.’

‘40(4). Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all persons beneficially entitled to the estate have been ascertained and determined.’

11. I believe both parties, and in particular the first administrator, have placed before me sufficient material in compliance with the above provisions, relating to the persons who are beneficially entitled and the shares allotted to each one of them.

12. I note that P A O has not come forward to claim a share in the estate, and her relationship with the deceased has not been properly brought out. All what comes out is that she is the mother of B O O. She should not feature in this matter in any way, unless and until she comes on record. It is also alleged that the said B O O is a person of special needs, yet no material has been placed before me as proof thereof.

13. The other thing of note is that G A O was estranged from the deceased as at the date of his death, and at the point of death he was married to and living with Z A O. It is alleged that G A O was divorced from the deceased. Unfortunately, the person making the allegation provided no proof thereof. She only attached documents establishing existence of divorce pleadings, but the documents on the outcome of the proceedings were not exhibited. G A O herself chose to be silent on the matter. I shall presume from that silence that there was indeed dissolution of that marriage, and therefore G A O was not a surviving spouse of the deceased, and she is not entitled to a share in the estate. As a divorced spouse, she could only stake a claim to the estate through an appropriate application mounted under section 26 of the Law of Succession Act for reasonable provision. I have not come across any such application, and therefore there is no basis for devolution of any part of the estate to her

14. I have also taken note of the fact that all the assets that make up the estate and that are available for distribution were acquired after the separation or dissolution of the marriage between the deceased and the third administrator.

15. In view of what I have stated here above, I shall order distribution of the estate in the following terms

–

(a) Uholo/Sigomere/[particulars withheld] – to Z A O, for herself and in trust for T J O, K W O and F D O; in equal shares;

(b) Uholo/Sigomere/[particulars withheld] – to B O O, absolutely;

(c) Uholo/Sigomere/[particulars withheld] – to R A O and R O O, equally;

(d) Ngong/Ngong/[particulars withheld] – to Z A O, absolutely;

(e) LR No. [particulars withheld] – to be sold and the proceeds of sale to be utilized to settle debts and liabilities, with the surplus funds being thereafter shared out between B O O, R A O, R O O, T J O, K W O and F D O, equally;

(f) Shares in National Bank of Kenya Limited, Safaricom Limited, Mwalimu Sacco Limited and E-Net Work Limited – to B O O, R A O, R O O, T J O, K W O and F D O, equally;

(g) Money in Standard Chartered Bank – to Z A O, T J O, K W O and F D O, equally;

(h) Money in National Bank of Kenya Limited – to B O O, R A O and R O O, equally; and

(i) Motor vehicles KAH [particulars withheld], KAA [particulars withheld] and KAG [particulars withheld] – to Z A O, absolutely.

16. The grant on record shall be confirmed in those terms. In the event that any child or children are minors or of unsound mind, their shares shall be held in trust for them by their respective mothers. A certificate of confirmation of grant shall issue accordingly. Each party shall bear their own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 29TH DAY OF SEPTEMBER, 2017.

W. MUSYOKA

JUDGE