



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 550 OF 2008**  
**IN THE MATER OF THE ESTATE OF JOHN MUHALIA AMULYOTO**  
**BETWEEN**  
**TERESINA CHITAYI AMULYOTO.....1<sup>ST</sup> PETITIONER**  
**LEAH KHATENJE AMULYOTO.....2<sup>ND</sup> PETITITONER**  
**AND**  
**CECILIA SHILOSYO AMULYOTO.....1<sup>ST</sup> OBJECTOR**  
**ALFRED AMULYOTO.....2<sup>ND</sup> OBJECTOR**  
**AND**  
**ROWLAND AMULYOTO.....3<sup>RD</sup> OBJECTOR**

**RULING**

1. This cause which relates to the estate of John Amulyoto Muhalia (deceased) who died intestate on 11.05.2007 has a long history which culminated in the judgment of this court (Mwita J) delivered on 14.06.2017. By that judgment a grant of representation intestate for the estate of the deceased was to be issued in the joint names of Teresina Chitayi Amulyoto and Rowland Amulyoto subsequent to which the two administrations would file summons for confirmation of grant “indicating correct names of all beneficiaries of the deceased’s estate excluding the names of Sulumena Musinzi and Janet Godia.” In his ruling, Mwita Judge found and held that Sulumena Msinzi and Janet Godia were not widows of the deceased. The learned judge gave a rider to the joint filing of the summons for confirmation by Teresina Chitayi Amulyoto and Rowland Amulyoto when he directed that either of them could file summons for confirmation.

2. In the judgment, the learned Judge also found and held that the actual details of who the true beneficiaries of the deceased’s estate were had not come out clearly from the pleadings and the oral evidence, hence the direction to the administrators to indicate the correct names of all the beneficiaries of the deceased’s estate in the summons for confirmation, whether the summons was filed jointly or by either of the administrators.

3. In compliance with Justice Mwita’s orders, Summons for Confirmation of grant was filed by the firm

of Rauto & CO. Advocates on the 16.08.2017. The same is dated 14.07.2017 and makes certain proposals on the mode of distribution of the various properties comprised in the deceased's estate.

4. When the matter came up before me on 03.10.2017, Miss Rauto, Advocate, asked the court to render a ruling on the proposed distribution. Now that I have had the benefit of reading through the pleadings as well as the judgment of my learned brother Mwita Judge, I find that I cannot, at this stage, confirm the grant without the physical presence of all the beneficiaries to the deceased's estate. This is because none of the widows was able to give a concrete list of the children of each of the two houses of the deceased.

5. In the circumstances, I direct counsel for the administrators to take another date at the registry for hearing of the summons for confirmation. I further direct that on that day for the hearing of the summons all the beneficiaries attend court to enable the court deal with the issues conclusively once and for all, except for those who will have formally renounced their interest in the deceased's estate.

It is so ordered.

Ruling delivered, dated and signed in open court at Kakamega this 30<sup>th</sup> day of November 2017

RUTH N. SITATI

JUDGE

In the presence of

.....Miss Atieno for Rauto.....for petitioners

.....Deceased.....for 1<sup>st</sup> objector

.....M/S Andia (absent).....for 2<sup>nd</sup> objector

.....Mr. Kubebea.....for 3<sup>rd</sup> objector

.....W/A.....for 4<sup>th</sup> and 5<sup>th</sup> objectors

.....Polycap.....Court Assistant