



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
SUCCESSION 315 OF 2014

IN THE MATTER OF THE ESTATE OF TENGEYO OLE NCHUE...DECEASED

BETWEEN

KIROTIANA ENOLE NCHUE.....PETITIONER

VERSUS

NOONKOKUA ENE NCHUE.....RESPONDENT

RULING

1. **TENGEYO OLE NCHUE** (hereinafter “the deceased”) died intestate on 5th March 2010. The deceased was prior to his death married to two wives namely; Kirostiana Enole Nchue (hereinafter referred to as the 1st House”) and Noonkua Ene Nchue (hereinafter “the 2nd House”).

2. Grant of letters of administration intestate was issued to his two widows on 15th April 2015. The two houses later disagreed on how to share the estate of the deceased amongst all his beneficiaries. The deceased owned a parcel of land known as LR NO. Transmara/Osinoni/103 measuring 59.63Ha (hereinafter “the suit land”) and he had no liabilities.

3. It was the applicant’s (1st House) submission that the deceased had, during his life time, sub-divided and settled each house on one half of the said land where he put up a homestead for each wife together with her children. The applicant claims that the respondent (2nd house) moved her homestead from where the deceased had settled her to the portion earmarked for the 1st house.

4. The main bone of contention in this case is that the respondent is not willing to occupy the ½ of the suit land that was given to her house by the deceased and persists on occupying the portion that belongs to the first house.

5. No amount of out of court talks has been able to make the 2 protagonists reach a settlement on distribution thereby necessitating this court’s determination on the mode of distribution of the deceased’s estate.

6. Where parties fail to agree on the mode of distribution, the court falls back and is guided by the provisions of **Section 40 (1) of the Law of Succession Act** which stipulates as follows:

“40. Where intestate was polygamous

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.”

7. A “house” refers to a family unit composed of a wife, whether alive or dead at the time of the death of the husband and the children of that wife. **Section 40 (1) of the Law of Succession Act** provides for the consideration of the number of children in each house and does not require that the estate of a polygamous intestate be divided equally (See **Rono Vs Rono & Another (2005) E.A 363**).

8. It was not in dispute that the deceased’s two houses consisted of the following members:

1st House

- | | |
|---|-----------------|
| 1. Kirodiana Enole Nchue | Widow |
| 2. Charles Oloishuru Ole Nchue | Son |
| 3. Jackson Lemashon Pere | Son |
| 4. Peter Lepita Tengeiyio (deceased) | Son |
| 5. Samwel Ronkei Nchue | Son |
| 6. Julius Tenkei Pere | Son |
| 7. Daniel Tengeyio | Son |
| 8. Ereteti Nchue Ole Kononkoi | Daughter |
| 9. Cicillia Nchue Ole Kakai | Daughter |
| 10. Paranai Nchue Ole Nkosek | Daughter |
| 11. Tiile Nche Semeyioy | Daughter |

2nd House

- | | |
|----------------------------------|-----------------|
| 1. Noonkua Ene Nchue | Widow |
| 2. Susan Nchue Ole Kaloi | Daughter |
| 3. Lenkai Nchue | Son |
| 4. Nchue Ole Waigeyio | Son |
| 5. Shakini Nchue Ole Kuso | Daughter |
| 6. Dancan Ledama Nchue | Daughter |
| 7. Seenoi Nchue | Daughter |
| 8. Silvia Noomali Nchue | Daughter |

9. It was also not disputed that one beneficiary Peter Lepita Tengeiyio (deceased) was survived by a wife

and children who will automatically benefit from his share of the deceased's estate.

10. From the above list of the deceased's houses, it is clear that the 1st house has 11 units (the widow inclusive) while the 2nd house has 8 units making a total of 19 units.

11. As I have already stated in this judgment, the estate of the deceased consists of the suit land measuring 59.63 Ha which if shared equally among the 19 units (dependants) translates into 3.14 Ha (7.85 Acres) each.

12. Going by the above calculation and division, I find that the first house shall get $3.13 \text{ Ha} \times 11 = 34.43 \text{ Ha}$ while the 2nd House will get $3.13 \times 8 = 25.04 \text{ Ha}$.

13. The children in each house and their respective mothers will divide their house's share in accordance with the provisions of sections 35-38 of the Law of Succession Act.

14. The grant of letters of administration issued to the deceased's widows on 15th April 2015 is hereby marked as confirmed as stated hereinabove.

15. Each party shall bear his/her own costs.

Dated, signed and delivered in open court this 13th day of December, 2017

HON. W. A OKWANY

JUDGE

In the presence of:

- Mr. Wesonga for the Petitioner
- Mr. Mwalo for the Respondent
- Omwoyo: Court Clerk