



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 2110 OF 2008

IN THE MATTER OF THE ESTATE OF LANET OLE NKOITIKO-(DECEASED)

RULING

1. When the Summons for Confirmation dated 12<sup>th</sup> June 2013 came up for hearing, a number of the survivors voiced their objection to it. I granted them time to file affidavits in protest. Those unhappy with the application included Hellen Nadupoi, Priscilla Neisimoi, Simon Wagusu, Jerusha Soila and Veronica Nyayeiyio.
2. In the end only Priscilla Nesimoi Lanet filed an affidavit sworn on 16<sup>th</sup> December 2013. Her objection is three-pronged. Firstly, she states that one of the widows of the deceased did not have any children. Secondly, she complains that accounts have not be provided with respect to the rents collected from the property known as Ongata Rongai Plot No.215. Finally, she avers that the deceased had given directions on the disposal of Ngong/Ngong/16027 and Ngong/Ngong/29371. She then proceeded to propose equal distribution across the board.
3. There is a reaction to the protest affidavit. It is sworn on 25<sup>th</sup> March 2014 by Mary Sayanto Lanet, the widow without children, ostensibly to explain that she had been given one of the children of the second wife of the deceased for adoption. She also makes several comments on the distribution. It is instructive that she is not an administrator of the estate, nor the applicant to the application dated 12<sup>th</sup> June 2013. I doubt whether, in view of **Section 71(1)** of the Law of Succession Act, which envisages that the confirmation application is to be filed by a grant holder, Mary Sayanto Lanet is the proper person to respond to the co-administrator's protest affidavit of 16<sup>th</sup> December 2013.
4. The confirmation application dated 12<sup>th</sup> June 2013 is expressed as brought at the instance of the two administrators, Duncan Letila Lanet and Priscillah. The affidavit filed in support of the application opens as if it is sworn by the two, Duncan Letila Lanet and Priscillah Neisimoi, yet at the execution clause it is expressed as sworn only by Duncan Letila Lanet, and it bears only one signature.
5. The distribution proposed in the application is to be found in a separate document titled "**Consent to the Mode of Distribution of Estate,**" which is dated 20<sup>th</sup> December 2012 and is purportedly executed by all the survivors of the deceased. The proposed distribution gives the bulk of the estate to the widows, Mary Sayanto Lanet and Susan Simayo Lanet. This is no doubt contrary to **Section 40** of the Law of Succession Act where surviving widows are treated as additional units to the children, and where it is envisaged that such widows share the estate equally with the surviving children.
6. It would also appear that the proposed distribution benefits a large number of persons who have not been identified in the cause as survivors of the deceased. These individuals include David Macharia Wanjama, Peter Chege Kimani, James Kaguru Muiruri, Benard Gitau Wainaina and Joseph Kibui Kamau. There is no narrative as who these are, people how they related to the deceased and the circumstances under which they get to be allotted shares in the estate of the deceased.
7. The administrators were bound to give explanations on the individuals mentioned in paragraph 6 above given the provisions of **Section 82 (b) (ii)** of the Act, which provides that "**no immovable**

***property shall be sold before the confirmation of the grant.*** It is important to know whether these individuals were purchases of the property allocated to them and especially to be imposed as when land from they acquired interest in the said assets.

8. The proposed distribution devolves certain assets to “*Priscillah Neisimoi Lanet to administer others.*” Such provision is vague to the extreme to the extent that it does not define who “*others*” are. A grant ought not be confirmed on the basis of such vague dispositive provisions.
9. On the face of it, the distribution proposed in the application dated 12<sup>th</sup> June 2013 is misconceived to the extent that it does not comply with the relevant law. Indeed, the distribution proposed by Priscillah Neisimoi Lanet in her affidavit of 16<sup>th</sup> December 2013 is close to what the law expects.
10. I note that both proposals provide for a brother of the deceased, called Suyanka Sitat. He is to get 10 acres out of Kajiado/Loodariak/655. There is no explanation as to why Suyanka Sitat should be catered for in view of *Section 39(1)* of the Law of Succession Act, which envisages that surviving parents and siblings of a dead person are not to get a share out of his estate so long as he is survived by spouse or spouses and children, as is the case in this cause.
11. I will postpone confirmation of the grant herein in view of everything that I have stated above. The administrators are and the survivors shall consult further. The administrators granted leave to file a further affidavit making fresh proposals on distribution, taking into account what I have expressed in this ruling. The matter shall be mentioned on 25<sup>th</sup> February 2015 for further directions.

**DATED, SIGNED and DELIVERED at NAIROBI this 30<sup>th</sup> DAY OF January 2015.**

**W. MUSYOKA**

**JUDGE**