



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT HOMA BAY**

**SUCCESSION CAUSE NO. 23 OF 2015**

**Formerly Migori High Court Succession No. 100 of 2014**

**Rongo Succession Cause No. 181 of 2014**

**IN THE MATTER OF THE ESTATE OF**

**OKECH MWANDO (DECEASED)**

**BETWEEN**

**CHRISTOPHER OJOWA OKECH ..... APPLICANT**

**AND**

**NUR ATIENO OKECH ..... RESPONDENT**

**RULING**

1. The matter before the court concerns the distribution of the estate of Okech Mwando (deceased) who died on 21<sup>st</sup> December 2007.
2. It is not in dispute that the deceased had behind two wives who are also deceased. The first wife, Dorina Okech, had six children; Vitalis Juma Okech (deceased), Fredrick Mwando Okech (deceased), Michael Kassim Okech (deceased), Paul Ogaya Okech, Christopher Ojowa Okech and Okuro Okech (deceased). The second wife, Peris Mangicho had the following children; Abdul Odhiambo Okech (deceased), Asman Otieno Okech, Nur Atieno and Mwajuma Odhiambo. There was no dispute about the beneficiaries entitled to share in the estate.
3. The deceased estate comprises the following properties;
  - KANYANDA/KANYANGO/KALANYA/3125,
  - KANYADA/KALANYA/KANYANGO/3069 and
  - KANYADA/KALANYA/KANYANGO/2767.
4. The court requested parties to agree on the mode of distribution failing which, the court would distribute the estate. The parties failed to reach an agreement and they put forth their respective proposals. Christopher Ojowa Juma, representing the first house, proposed that Plot No. 2767 be shared among the beneficiaries of the second house, Plot No. 3069 be given to Agnes

Kasim while Plot No. 3125 be given to him. The proposal by the protestor, Nur Atieno, is that as children of the deceased, each beneficiary is entitled to an equal share of the estate. At the hearing Paul Ogaya Okech renounced any claim to the estate.

5. The distribution of the property where the intestate was polygamous is governed by **section 40** of the **Law of Succession Act (Chapter 160 of the Laws of Kenya)** which states as follows;

*40(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 estate shall, in the first instance be divided among the houses according to the number of children in each house, but adding any wife surviving him as an additional until to the number of children.*

*(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be distributed in accordance with the rules set out in section 35 to 38.*

6. It is clear therefore that the law contemplates that all the beneficiaries are treated equally. In the circumstances, I reject the proposal by Christopher Okech. I also reject his proposal to take in account the property of Abdulrahman Odhiambo Okech and Vitalis Juma Okech as these are not part of the deceased's estate.

7. I have taken into account the relative sizes of the properties in distribution to ensure that each part gets as equal a share as possible. I also direct that the actual subdivisions shall take into account any part of the property developed and occupied by any beneficiary.

8. I therefore distribute the estate and confirm the grant of letters of administration intestate as follows;

- ***KANYADA/KALANYA/KANYANGO/2767 (0.06Ha) – Nur Atieno and Mwanjuma Adhiambo in equal shares.***
- ***KANYANDA/KANYANGO/KALANYA/3125 (0.22Ha) – Agnes Kasim (0.02Ha) and the remainder to Christopher Ojowa and Asman Otieno Okech in equal shares.***
- ***KANYADA/KALANYA/KANYANGO/3069 (0.01Ha) – Agnes Kasim.***

9. As this is a family matter, there shall be no order as to costs.

**DATED and DELIVERED at HOMA BAY this 22<sup>nd</sup> day of May 2015.**

**D.S. MAJANJA**

**JUDGE**