



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 2015 OF 2012**  
**IN THE MATTER OF THE ESTATE OF**  
**JOSHUA ORWA OJODEH - (DECEASED)**

**ULDA ALOO OJODEH..... OBJECTOR**

**VERSUS**

**MARY AWUOR OJODEH..... PETITIONER**

**RULING**

1. This ruling is in respect of the summons for confirmation dated 8<sup>th</sup> April 2013. The petitioner asked that the grant of letters of administration intestate made to her on 14<sup>th</sup> January 2012 be confirmed. In the affidavit sworn in support of the application she deponed that she was the widow of the deceased with whom they had one child, a son, called ANDY OKEYO OJODEH, aged 21. Her case was that the deceased had no other beneficiaries, and did not have dependants.
2. The assets left by the deceased were:-
  - a. LR NO. KANYAMWAKA/KABENYO KWANDIKUL/308;
  - b. NAIROBI/BLOCK 76/721;
  - c. FLAT NO. A2 ON L.R. NO. 209/73/15 NAIROBI;
  - d. LR NO. 209/1/115 NAIROBI;
  - e. KISUMU MUNICIPALITY/BLOCK 7/187;
  - f. LR KISUMU MUNICIPALITY/BLOCK 12/98;
  - g. LR KISUMU MUNICIPALITY/BLOCK 7/10;
  - h. KCB SHARES;
  - i. KENYA AIRWAYS SHARES;
  - j. BARCLAYS BANK KENYA SHARES;
  - k. PENSION FROM THE NATIONAL ASSEMBLY;
  - l. ACCIDENT INSURANCE DEATH CLAIM;
  - m. GRATUITY FROM THE NATIONAL ASSEMBLY;
  - n. A/C NO. 001120007143401 CO-OP BANK PARLIAMENT ROAD;
  - o. A/C NO. 1103851861 KCB KISUMU;
  - p. A/C NO. 0100105786100 STANDARD CHARTERED BANK, MOI AVENUE NAIROBI; and

q. A/C NO. 0102096063500 STANDARD CHARTERED BANK.

3. The liabilities were indicated as follows:-

- a. Mortgage with the Kenya National Assembly;
- b. Mortgage with the Co-op Bank;
- c. Co-op Sacco Loan;
- d. Parliamentary loan;
- e. Savings and Loans loan;
- f. Standard Bank overdraft;
- g. Consortium of Friends loan; and
- h. Personal debts.

4. The value of the assets was stated to be estimated at Kash.100,000,000/= whereas the liabilities were estimated at Ksh.80,000,000/=

5. The objector was the mother of the deceased. She swore two affidavits in support of the confirmation, but challenged the mode of distribution as proposed by the petitioner. The petitioner had proposed that the net estate be shared equally between her and her son. The objector stated that she was the deceased's dependant, and referred to the consent recorded on 14<sup>th</sup> January 2013 which had declared her a dependant who was entitled to reasonable benefit from the estate. She sought to be given Kshs.10,000,000/= from the estate to cater for her needs which included transportation, medical and other incidentals. The objector's case was that a significant portion of assets of the deceased had been excluded from the list given by the petitioner. At the same time, she had exaggerated the liabilities. She gave copies of 11 (eleven) logbooks of vehicles she said belonged to the deceased, which vehicles had not been included in the list of assets. I have looked at the records. The vehicles are Mercedes Benz KAY 109E registered in the name of Shah Ashok; Toyota Corolla KAZ 096Q registered in the name of Upper Hill Springs Restaurant Ltd; Land Rover KAZ 331L registered in the name of Finchley Insurance Brokers Limited; Range Rover KBH 993Q registered in the name of the deceased; Station Wagon KVV 221 registered in the name of Loreto Sisters; Saloon KAQ 693W registered in the name of the deceased jointly with National Assembly, Mitsubishi Fuso Prime Mover KBB 967G registered in the joint names of Ouru Super Stores Ltd and Diamond Trust Bank Limited; Ford U.K. Three Wheeler KAG 194S registered in the name of the deceased and Toyota Hiace KAY 226Y registered in the name of Village Resort Ndhiwa Ltd; Toyota Station Wagon KAQ 104H registered in the name of Muthoga Ngera; and Land Rover KAW 105E registered in the name of CMC Motor Group Ltd. From this list, the deceased owned only two vehicles and one jointly with the National Assembly. The petitioner swore a further affidavit to admit that the deceased owned these three vehicles, and are part of the estate. To this extent, I find that she had not made full disclosure of the assets. As regards the liabilities, I find that the claim that they had been exaggerated by the petitioner was not substantiated. However, it would have been more useful for an expert valuation be done regarding the assets and liabilities of the deceased.

6. Following the order of Justice Kimaru made on 20<sup>th</sup> March 2013, the objector was given Kshs.720,000/= for maintenance. In the directions by this Court delivered on 11<sup>th</sup> February 2015 it was found that this was a provisional order pending the determination of her full entitlement as a dependant. A consent had been recorded on 14<sup>th</sup> January 2013 declaring her a dependant. The directions of this Court followed arguments regarding whether the order dated 20<sup>th</sup> March 2013 was a provisional one or a final payment. It was the petitioner's case that the request for Kshs.10,000,000/= was misplaced and would not be afforded by the estate.

7. This Court is called upon to determine what is the reasonable provision that is due to the objector. This is because the petitioner and her son have agreed to equally share the remainder of the net estate.

8. **Section 27 of The Law of Succession Act (Cap 160)** provides that:-

**“In making provision for a dependant the court shall have complete discretion to order for a specific share of the estate to be given to the dependant, or to make such other provision for him by way of periodical payments or a lump sum, and to impose such conditions, as it thinks fit.”**

**Section 28** of the **Act** provides that in determining the amount payable to the dependant, the court should have regard to:-

- a. the nature and amount of the deceased’s property;
  - b. any past, present or future capital or income from any source of the dependant;
  - c. the existing and future means and needs of the dependant;
  - d. whether the deceased had any advancement or other gift to the dependant during his lifetime;
  - e. the conduct of the dependant in relation to the deceased;
  - f. the situation and circumstances of the deceased’s other dependants and the beneficiaries under any will; and
  - g. the general circumstances of the case, including, so far as can be ascertained, the testator’s reasons for not making provision for the dependant.
9. The objector stated that she is of advanced age and require funds for medical attention, transportation and other incidentals, and living expenses. She wants these for the rest of her life. The response by the petitioner was as follows:-

**“14. THAT ULDA ALOO OJODE has provisions and benefits from the Estate of her late husband and continues to receive support and provisions as elaborated in my earlier affidavit herein.**

**15. That ULDA ALOO OJODE sought for in the presence of Hon Kimaru J and received her full entitlement as she sought from the Estate.**

**16. THAT the liabilities of the Estate in any event far outstrips the Assets and any demand from the Estate as made by ULDA ALOO OJODE cannot be sustained even if ULDA ALOO OJODE was entitled as proposed by her.**

**17. THAT in her circumstances and in the interest of justice, now that the deceased is no more, the more than four working and well paid children of ULDA ALOO OJODE should not take over and deal with any additional and financial requirement she may have over and above what the Estate has provided for her and what her late husband left for her which I indeed submit is more than enough to sustain her for the rest of her life.**

**18. THAT the deceased son is still undergoing University Education in the United Kingdom and as such needs massive financial support.**

**19. THAT unlike Ulda Aloo Ojode, I and my son ANDY OKEYO OJODE do not have any other source of support, financial or otherwise from a third party but only from the Estate.”**

The objector was of the view that she was entitled to a fair, equitable and just share of the estate.

10. I reiterate that the objector has received Kshs.720,000/= from the estate of the deceased. She has not denied that she has more than four children who are working and are well paid. She has also not denied that she is benefitting from the estate of her late husband. **In the Matter of the Estate of Ashfod Njuguna Nduri (deceased) HC Succession Cause No. 1589 of 1994 at Nairobi**, the Court was dealing with an application under **section 26** of the **Act** when it observed that

**“reasonable provision”** is not necessarily fair distribution of the estate. It stated as follows:-

**“A dependant coming under section 26 of Chapter 160 is not in the same standing as a beneficiary under a will or an heir under the Law. This court will not order reasonable provision that exceeds the present and future needs of the dependant, notwithstanding how rich the estate might be.”**

In **JOHN GITATA MWANGI AND OTHERS .V. JONATHAN NJUGUNA MWANGI AND OTHERS**, Nairobi Court of Appeal Court Appeal No. 213 of 1997 it was held that:-

**“In order that this court may be enabled to come to a proper conclusion as to what order it should make a dependant has the duty to give satisfactory evidence as to his past, present or future capital or income and his existing or future needs. Without this, the court will not be able to make any sensible order.”**

11.The objector asked to be given a lump sum figure of Kshs.10,000,000/= from the estate of the deceased. There was no evidence led to show how this figure was arrived at. There was no evidence led to show, for instance, how much the objector was receiving monthly, or periodically, from the deceased. She did not say how much he spent on her medical needs. She did not state that she received no assistance from her other children. In short, her existing and future needs were not specified.

12.I have considered all the facts of this case. I determine that, after taking into account the Kshs.750,000/= that has already been received and all the circumstances of this application, it would be reasonable to give to the objector Kshs.2,000,000/= (Two Million Kenya shillings) being lumpsum for her maintenance. The rest of the net estate of the deceased shall be shared equally between the petitioner and her son. It is on these terms that I confirm that grant that was issued to the petitioner on 14<sup>th</sup> January 2012. Each side will bear their own costs as this is a family dispute.

**DATED at NAIROBI this 15<sup>th</sup> day of May 2015**

**A.O. MUCHELULE**

**JUDGE**

**DELIVERED at NAIROBI this 20<sup>th</sup> day of May, 2015**

**L. ACHODE**

**JUDGE**