

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 634 OF 1993

**IN THE MATTER OF THE ESTATE OF JOSEPHAT KAMERI NGANGA alias JOSPHAT
KAMERI NGANGA alias JOSEPHAT KAMIRI NGANGA (DECEASED)**

RULING

1. The application dated 7th November 2012 is for confirmation of the grant made in the matter on 21st March 2013.
2. When the matter came up for hearing on 17th September 2014 seven of the ten surviving children of the deceased attended court. Six of them did not support the proposed distribution in the application, while two were in support.
3. As the children were not in agreement, I postponed the application dated 7th November 2013 to 29th October 2014 to allow them time to consult and agree on the assets.
4. On 29th October 2014, seven of the surviving children attended court. I was informed that they had held a meeting on 12th October 2014 and agreed to distribute the estate of the deceased equally amongst themselves.
5. An original of the handwritten minutes of the proceedings at the meeting on 12th October 2014 was placed before me. The body of the minutes indicates that the children agreed to have the estate shared equally among all the ten (10) children of the deceased. At the end of the minutes the children's names are listed. Nine of the children signed the minutes, with the exception of Lawrence Ng'ang'a Kamiri.
6. At the court appearance on 29th October 2014, eight of the children addressed the court and stated that they had agreed on equal distribution as per the minutes of 12th October 2014. Bertha Njau stated that their brother, Lawrence Ng'ang'a Kamiri, was also in agreement. It was only Godfrey Kahuro who indicated that he did not support equal distribution. Curiously, the minutes of 12th October 2014 indicate that he did sign the minutes.
7. I have perused the record herein. The deceased died intestate on 20th July 1986. He was survived by ten (10) children being seven (7) sons and three (3) daughters.
8. Having died after the Law of Succession Act, Cap 160, Laws of Kenya, had come into force, the law to form the intestate succession to his estate is Part V of the Law of Succession Act.
9. The deceased was survived by children but no spouse. The relevant provision in the circumstances is Section 38, which states as follows:-

“Where an intestate has left a surviving child or children and no spouse, the net intestate estate, shall, subject to the provisions of Section 41 and 42, devolve upon the surviving child, if there be only one or be equally divided among the surviving children.”

10. Section 38 applies to both male and female children, for it does not discriminate whether based on gender or marital status.

11. The proposed distribution in the minutes of 12th October 2014 fully complies with Section 38 of the Law of Succession Act. I have no basis therefore for departing from the said proposals nor from the provisions in Section 38 of the Act.
12. Consequently, I do hereby confirm the grant dated 21st March 2013, the estate shall be distributed equally amongst the ten (10) children as stated in the minutes of 12th October 2014. Costs shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 25TH DAY OF SEPTEMBER, 2015.

W. MUSYOKA

JUDGE

In the presence of advocate for the Applicant.

In the presence of advocate for the Respondent.