



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 2544 OF 2007**

**IN THE MATTER OF THE ESTATE OF NJOROGE THAIYA – (DECEASED)**

**RULING**

1. The application dated 21<sup>st</sup> March 2012 is for confirmation of the grant made on 16<sup>th</sup> February 2011. The administrators have identified six (6) persons as the survivors of the deceased. The application proposes distribution of the estate among the six (6) survivors. Some assets have been shared equally among all the six (6) survivors, while others have been shared out among a smaller number of the survivors. A number of assets have been devolved directly to the surviving spouse alone.
2. There is an affidavit by one of the administrators, Hannah Mumbi Mbuthia, sworn on 26<sup>th</sup> April 2012. Although it is headed “*Affidavit in Support of the Proposed Mode of Distribution*” in fact it is an affidavit of protest as it the deponent substantially disagrees with the proposals made in the application and comes up with her own proposals.
3. Both sides have filed detailed written submissions. The applicant’s submissions are dated 21<sup>st</sup> May 2012 and were filed in court on 28<sup>th</sup> May 2012. The respondent’s submissions are dated 21<sup>st</sup> May 2012 too and were filed in court on 22<sup>nd</sup> May 2012.
4. The respondents agree in principle with the application, save that the estate should be shared equally. They feel that the surviving spouse, Esther Njeri Kamau, should be entitled absolutely to only one property – Limuru/Bibirioni/2618, the rest should be divided equally among all the survivors. They emphasize that the provisions of the Constitution and of the Law of Succession Act do not allow discrimination based on gender, and envisage equal distribution of an estate amongst all the children of the deceased.
5. The submissions were highlighted on 12<sup>th</sup> June 2012 before Mugo J. Counsel for the applicant urged that the estate should be distributed equally amongst all the children adding the widows as extra units. Counsel for the respondent called for a fair distribution.
6. I note that the deceased was a polygamist. He had married twice and therefore his estate composed of two households. Going by the provisions of *Section 40* of the Act, the net intestate ought to be divided between the two households proportionate to the number of children in each house treating the surviving spouses as additional units to the houses to which they belong. Thereafter distribution in each household should be guided by *Sections 35, 36, 37 and 38* of the Act, which ever is applicable. The principle in Part V of the Act is that all the children are to be treated equally, meaning that the estate shall be divided equally among them.
7. I have carefully gone through the papers on record. I am unable to determine who belongs to which household as there are absolutely no documents on record which address that issue.
8. Consequently, I hereby postpone the confirmation of the grant. I send the matter back to the administrators with the following directions:-
  - a. that they shall group the survivors in accordance with the households they belong to.
  - b. That Limuru/Bibirioni/2618 and Limuru/Bibirioni/T.65 shall be allotted to the surviving widow, Esther Njeri Kamau, with the rest being divided equally among the survivors as per the provisions

of *Section 40* of the Law of Succession Act.

c. that before the allotments referred to in (b) above are made, provision should be made for the settlement of all debts and liabilities, which must be identified and documented.

9. The matter shall be mentioned after 30 days for compliance.

**DATED, SIGNED and DELIVERED at NAIROBI this 31<sup>st</sup> DAY OF January, 2014.**

**W. MUSYOKA**

**JUDGE**