



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**SUCCESSION CAUSE NO.85 OF 2007**

**IN THE MATTER OF THE ESTATE OF A O K (DECEASED)**

**L O.....1<sup>ST</sup> PETITIONER**

**G O .....2<sup>ND</sup> PETITIONER**

**VERSUS**

**A N O.....RESPONDENT**

**J U D G M E N T**

A O K, the deceased to whose estate these proceedings relate, died on 4<sup>th</sup> June 2006. L A N (the Petitioner) and G O claiming to be wife and son respectively of the deceased, petition this court to be issued with a grant of letters of administration intestate. In the petition, the Petitioner listed the beneficiaries of the deceased as follows:

- (I) L A N – (widow)
- (II) G O O – son – 23 years
- (III) B O – son - 18 years
- (IV) E O – son - 18 years
- (V) A O – son – 16 years
- (VI) B A O – daughter – 14 years

The respective ages of the children of the deceased reflected their ages as at 2007 when the petition was filed. The said children are now all adults.

The Petitioner listed the following properties as belonging to the estate of the deceased:

- a. House in Kibera – Karanja Road Plot No. *[particulars withheld]*
- b. LR. No. Gem/Kajulu/ *[particulars withheld]*
- c. LR. No. Gem/Kajulu/ *[particulars withheld]*
- d. Plot No. *[particulars withheld]* ?A’ - Rongo
- e. Plot No. *[particulars withheld]* Rangwe 4?B’
- f. Nyaudho Plot No. *[particulars withheld]* – Koyolo Rangwe

- g. LR. No. Gem/Kajulu/ *[particulars withheld]*
- h. LR. No. Gem/Kajulu/ *[particulars withheld]*
- i. LR. No. Gem/Kajulu/ *[particulars withheld]*

The grant of letters of administration intestate was issued to the said L A N and G O on 14<sup>th</sup> May 2009. It later emerged that the said Petitioners had not disclosed the fact that the deceased had another wife by the name A N O. The said A N O had also petitioned this court in **Succession Cause No. 2917 of 2007** to be appointed the administrator of the estate of the deceased. She was issued with grant of letters of administration intestate in respect of the estate of the deceased on the same 14<sup>th</sup> May 2009.

When the parties appeared before this court on 20<sup>th</sup> July 2009, they agreed to consolidate the two succession causes. The consolidation order was issued on 14<sup>th</sup> October 2009. The two grants issued on 14<sup>th</sup> May 2009 were revoked. A new grant was issued in the names of A N O and L A N. The parties agreed that the issue that remained for determination by the court was in regard to how the properties that comprise the estate of the deceased were to be distributed. L A O filed summons for confirmation of grant on 9<sup>th</sup> February 2010. In the said application, she indicated her preferred mode of distribution of the estate of the deceased. A N O swore an affidavit of protest on 7<sup>th</sup> July 2010. She gave a counter proposal on distribution.

The parties agreed that the distribution of the estate of the deceased would be determined by the court upon considering the written submission filed by the respective counsel for the parties. The said submission was highlighted in court by Miss Olewe for the Petitioners and by Mr. Ogwe for the Respondent. Miss Olewe submitted that the parties had agreed on all issues, except two issues being the question of what comprised the estate of the deceased and the mode of distribution that should be adopted by the court. It was the Petitioners' case that all the properties that were acquired during the subsistence of the marriage between the 1<sup>st</sup> Petitioner and the deceased should be distributed to the 1<sup>st</sup> Petitioner. The Petitioners argued that some of the properties listed in the petition were no longer in existence because they had been repossessed by the government. The said properties were therefore not available for distribution. Miss Olewe submitted that the only properties that remained for distribution was the property in Kibera and the pension that is to be received by the beneficiaries of the estate from the deceased's employer. She proposes that that part of the estate be distributed in accordance with **Section 40(1)** of the **Law of Succession Act**. As regard the pension, the same should be shared equally between the two households.

Mr. Ogwe for the Respondent opposed the proposed mode of distribution. He submitted that the Petitioners had not placed any evidence on record to the effect that indeed some of the properties were acquired during the subsistence of the marriage between the 1<sup>st</sup> Petitioner and the deceased. They had further not established that some of the properties had been repossessed by the government. He proposed that the properties belonging to the estate of the deceased be distributed equally between the two households. He urged the court to consider the fact that the Respondent was not blessed with children while the 1<sup>st</sup> Petitioner was blessed with five (5) children. He was of the view that it would be unjust for the properties of the deceased to be distributed under **Section 40(1)** of the **Law of Succession Act** because it would result in injustice to the Respondent.

This court has carefully considered the rival submission made by counsel for the parties to this application. There are two issues for determination by this court. The first issue is whether some of the properties that comprise the estate of the deceased are in existence and whether some of the properties of the estate of the deceased should be excluded from distribution because it constituted matrimonial property due to the 1<sup>st</sup> Petitioner. In regard to this issue, the Petitioners submitted that the following parcels of land were matrimonial property:

- a. LR. No. Gem/Kajulu/ *[particulars withheld]*
- b. RL 26. Gem/Kajulu/ *[particulars withheld]*

- c. LR. No. Gem/Kajulu/*[particulars withheld]*
- d. LR. No. Gem/Kajulu/ *[particulars withheld]*
- e. LR. No. Gem/Kajulu/ *[particulars withheld]*

The Respondent disputed this allegation. Upon considering the evidence placed on record in form of affidavit evidence, this court agrees with the Respondent that the Petitioners placed no evidence on record to back their claim that the properties listed above were matrimonial properties. To the contrary, the Respondent was able to establish that some of the properties were acquired by the deceased long before he married the 1<sup>st</sup> Petitioner on 5<sup>th</sup> October 1996. This court therefore holds that the above properties are part of the estate of the deceased and are available for distribution by this court. In respect of the properties that are alleged to have been repossessed by the government, this court will distribute the same, and if they are in existence, the beneficiary thereof will be able to claim them. If not, such beneficiary will not be prejudiced because he/she would have benefitted from other properties.

The deceased was married to two wives: the Respondent (the first wife) and the 1<sup>st</sup> Petitioner (the second wife). The Respondent was not blessed with children. The 1<sup>st</sup> Petitioner was blessed with five (5) children. Whereas the Petitioners want the court to distribute the estate in accordance with **Section 40(1) of the Law of Succession Act**, the Respondent proposes that the estate be distributed between the two houses of the deceased. It is clear that if the court was to adopt either proposal, there would be injustice to either party. The court will therefore distribute the properties that comprise the estate of the deceased in such a manner that the interest of justice will be met.

The properties that comprise the estate of the deceased shall therefore be distributed as follows:

- I. House in Plot No. *[particulars withheld]* Kibera - Karanja Road Estate, Nairobi shall be sold and the proceeds therefrom divided between A N O and L A N in the ratio of 30:70. L A N shall get 70% of the value for herself and all her children.
- II. LR. No. Gem/Kajulu/ *[particulars withheld]* – to be inherited by L A N and all her children.
- III. LR. No. Gem/Kajulu/ *[particulars withheld]* shall be inherited by L A N and all her children.
- IV. LR. No. Gem/Kajulu/ *[particulars withheld]* shall be inherited by L A N and all her children.
- V. LR. No. Gem/Kajulu/ *[particulars withheld]* shall be inherited by A N O.
- VI. LR. No. Gem/Kajulu/ *[particulars withheld]* shall be inherited by A N O.
- VII. Plot No. *[particulars withheld]* ?A’ – Rongo shall be inherited by L A N and all her children.
- VIII. Plot No. *[particulars withheld]* Rangwe 4?B’ shall be inherited by A N O.
- IX. Nyaudho Plot No. *[particulars withheld]* – Koyolo Rangwe shall be inherited by L A N and all her children.
- X. The Pension and Death Gratuity of the deceased shall be shared equally between A N O and L A N.

The grant shall be confirmed on the above terms. There shall be no orders as to costs. It is so ordered.

**DATED AT NAIROBI THIS 22<sup>ND</sup> DAY OF APRIL, 2014.**

**L. KIMARU**

**JUDGE**