



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 315 OF 2012**

**IN THE MATTER OF THE ESTATE OF DAVID AMUKOWA MSUNGU – DECEASED**

**AND**

**IN THE MATTER OF**

**MARY MULUMBI AMUKOWA ..... OBJECTOR/APPLICANT**

**VERSUS**

**1. DORICA ALOO AMUKOWA**

**2. RISPER MATEBA MUSUNGU ..... PETITIONERS/RESPONDENTS**

**RULING**

At the confirmation of grant stage, the two administrators/petitioners Dorica Aloo Amukowe and Risper Mateba Musungu filed a proposed mode of distribution or division of the land asset of the deceased, parcel No. Marama/Shinamwenyuli/2238 as follows -

- i. John Indakwa Amukowa - 2½ acres
- ii. Andrew Musungu Amukowa - 2½ acres
- iii. Haron Waswa Amukowa - 2½ acres
- iv. Samuel Ambetsa Amukowa - 2½ acres
- v. Silester Wesonga Amukowa - 2½ acres
- vi. Thomas Andatso Amukowa - 2½ acres
- vii. Gilbert Chite Ochango - 2½ acres
- viii. Jane Indakwa Amukowa - 1 acre
- ix. Dibora Nambwayo amukowa - 1 acre
- x. Fridah Nyamwata Amukowa - 1 acre
- xi. Gladys Kangu amukowa - 1 acre
- xii. Abigael Amukwaya Amukowa - 1 acre
- xiii. Nereya Amakobe Amukowa - 1 acre
- xiv. Dorica Aloo Amukowa - 2 acres

The objector, Mary Mulumbi Amukowa, who was not in the list of those to benefit from the proposed mode of distribution, filed an objection through a Notice of Motion dated 12/8/13. She claimed, through a supporting affidavit sworn on 12/8/13, that she was the 1st widow of the deceased. That she wanted that each member of the family of the deceased be included the distribution of assets. That the administrators had frustrated her efforts to obtain a portion of her deceased husband's estate. She proposed distribution or division of the land asset as follows -

- i. Mary Mulumbi Amukowa
- ii. John Indakwa amukowa - be entitled to 10 acres

- iii. Dorica Aloo Amukowa
- iv. Andrea Musungu Amukowa
- v. Haron Waswa Amukowa – be entitled to 16 acres
- vi. Samuel Ambetsa Amukowa
- vii. Silvester Wesonga Amukowa
- viii. Thomas Andatso Amukowa

Her list excludes female beneficiaries, who were said to be daughters of the deceased by the administrators.

I observe that in the Chief's letter and in the initial declaration of survivors lists, the following were declared as survivors of the deceased -

- Dorika Aloo Amukowa - widow
- Roseline Musungu - sister
- Risper Mateba Musungu- sister
- Filis Makokha Musung - sister
- John Indakwa amukowa - son
- Andrew Musungu amukowa- son
- Haron Waswa Amukowa - son
- Jane indakwa amukows - daughter
- Samuel ambetsa amukowa - son
- Deborah Nambwaya amukowa - daughter
- Fridah Nyamwata amukowa - daughter
- Gladys Kangu Amukowa - daughter
- Silvester Wesonga Amukowa - son
- Thomas Andatso Amukowa - son
- Abigael amukwaya Amukowa - daughter
- Nereya Amakobe Amukowa - daughter

There is a name of Gilbert Chite, whose relationship with the deceased was not given by the Chief's letter. None of the proposed mode of distribution of assets, includes the three sisters of the deceased. There is no evidence that they were his dependants.

When the matter came up before me on 18<sup>th</sup> February, 2014, both the administrators and the objector were present in court. There was no recorded contest on whether the objector Mary Amukowa was a

widow of the deceased. She claimed to have only one child John Indakwa Amukowa. Dorica Amukowa, the 1<sup>st</sup> administrator on the other hand, just stated that she wanted that the children get a maximum of 2½ acres each. She stated that she was not aware of the mode of distribution proposed by the objector Mary Amukowa. The 2nd administrators Risper stated that she was a sister to the deceased who had given her land which she had already sold. She stated that it was not Dorica, the 1st administrator who had sold the land.

I observe that on the 2/5/13, Hon. Justice Chitembwe gave an order against intermeddling with the assets of the estate. However, the learned Judge retained Dorica and Risper as the administrators of the estate. The application against intermeddling was filed by the objector and John Indakwa Amukowa her son. Though the issue of who was a survivor of the deceased was raised then, the court ordered that the same would be decided at the confirmation stage.

At this confirmation of grant stage, no evidence has been tendered to suggest that the objector and her son are not survivors or beneficiaries of the estate. I find them to be surviving beneficiaries of the estate and therefore entitled to a share of the estate of the deceased.

In succession matters, it is preferable for all persons entitled to the estate (survivors) to be listed at the beginning of filing the application for grant of letters of administration. As there were two houses therein, it should have been disclosed then. All the dependants of the deceased should have also been listed and, where practicable, the reason for dependancy given.

Risper, the 2nd administrator has stated that she was a sister of the deceased. She has also stated that the deceased gave her some land which she has already sold. There is no indication in the two proposed modes of distribution that she gets any share. The other two sisters, Roseline and Filis are also not included in the list of those to benefit. The claim by Risper that she was given part of the land by the deceased has not been disputed. However, the proposed mode of distribution, even by her co-administrator does not include her as a beneficiary. She has not made any proposal for distribution for her benefit. I cannot make any proposal for her.

The proposal by the Objector Mary Mulumbi appears to exclude all the daughters of the deceased. In my view, that is wrong. They should also have been included because they had an interest. It would not be right for them not to be listed while the boys were listed as beneficiaries.

The Law of Succession Act (Cap. 160) recognises all surviving children as beneficiaries. The law provides for the mode of distribution of assets where there is more than one house. Section 40 of the Act covers this situation. It states as follows -

***“40 (1) Where an intestate has married more than once under any system of law that permits polygamy, his personal and household effect and the residue of the net intestate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit 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 in accordance with the rules set out under Sections 35 – 38.”***

It is clear from the above that the law says that where there is more than one house, the court in determining the distribution of assets has first to consider the number of children in each house. Then it has to add the name of the surviving spouse, just like each of the children in that house. In as much as possible, distribution of assets should be equal. A house with more surviving children will naturally therefore have a bigger share to inherit.

The estate here has about 26 acres of land. The children, male and female are about 12. It is apparent that the 6 female children of the 1st administrator Dorica, accepted to have 1 acre each. They

signed a consent to that effect. That is 6 acres. I will not disturb that.

In my view, that means that about twenty acres is to be distributed among the rest. It translates to the rest (6 sons) getting about 2 acres each. The widows, that is Dorica and Mary will get 4 acres each.

In my view, that is the fairest distribution of this estate, and I so order. Therefore confirmation of grant is hereby ordered, subject to the above distribution of the land asset. Costs are in the cause.

*Dated and delivered at Kakamega this 19<sup>th</sup> day of June, 2014*

**George Dulu**

**J U D G E**