



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
SUCCESSION CAUSE NO. 215 OF 2008

**IN THE MATTER OF THE ESTATE OF J B A.....
DECEASED**

RULING

By this application dated 9.2.2011 the applicant prays:

- “1. THAT the Honourable Court be pleased and do determine the shares of the deceased J B A according to the grant issued on 3rd September, 2010.**
- 2. THAT this Honourable Court be further pleased to exercise the proportion in dispensing the proceeds of the deceased property/estate according to the Law of the [sic] thereof and/or as per the order No. 3 of the Petition judgment delivered on 28th May 2010.**
- 3. THAT costs be in the cause**

This application arises from the judgment of my learned senior brother **Hon. Justice Ojwang** delivered on 28/5/2010. In that judgment which concerned the estate of the late **J B A**, the Honourable Judge held that apart from the two children of the deceased the Applicant **L I M** who was found to be a wife to the deceased was entitled to a share of his estate. As pointed out in that judgment the estate is modest. It consists only of the terminal benefits due to the deceased from his employer the Kenya Ports Authority. By a letter dated 18/4/2012 the Principal legal officer of the Authority confirms that the amount due to the estate is a lump sum payment of Kshs. 1,186,294/=. It is this that the court is being asked to apportion.

At the outset I wish to make it clear that the Respondent **B B A**, though a sister to the deceased and a co-administrator of his estate **is not** a dependant entitled to inherit from the estate. This remains the case despite the fact that Beatrice has custody and care over the children of deceased.

As stated earlier the parties have not been able to reach any agreement on the apportionment of the lump sum payment due to the estate. They are however agreed that by consent a sum of Kshs 50,000/= to be paid to each of the two lawyers acting for each party as legal fees. This would leave a balance of Kshs.1,086,294/= to be shared out between the two minor children and L. Each has an equal right of priority to inherit. As such the fair and just way would be to apportion to each a one third share of the estate. This means that each of the three will get **Kshs. 362,098/=**.

Therefore the court makes orders with respect to apportionment as follows:

KShs. - Cts

1. M M 362,098/00
2. D O M 362,098/00
3. L I M 362,098/00
4. Ananda & Co. Advocates 50,000/00
5. George M. Kabebe Advocates 50,000/00

Total Kshs. 1,186,294/00

Dated and delivered in Mombasa this 28th day of June, 2013.

No appearance by Respondent

Mr. Kabebe for Objector

Mr. Ananda for Petitioner

M. ODERO

JUDGE

28.6.2013