



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**SUCCESSION CAUSE NO. 485 OF 2010**  
**IN THE MATTER OF THE ESTATE OF E S A – DECEASED**

AND

N N ..... **1<sup>ST</sup> PETITIONER**

F J A ..... **2<sup>ND</sup> PETITIONER**

**R U L I N G**

This matter relates to a contested summons for confirmation of grant. The confirmed grant was challenged for not including land parcel No. [particulars withheld] as well as another piece of land at [particulars withheld].

In the confirmed grant, whose certificate was issued on 2<sup>nd</sup> December 2010, only the account at Kenya Commercial Bank Ltd. Kakamega Branch was disclosed.

In an affidavit filed by both petitioners, it has been disclosed that there were two land assets [particulars withheld] and [particulars withheld] belonging to the deceased.

The 1<sup>st</sup> petitioner proposed distribution of the said land as follows –

- [particulars withheld] be shared among the three children of the deceased equally.
- [particulars withheld] measuring 2.1 acres T S to get 0.9 acres, E M 0.6 acres, and S N S to get 0.6 acres.

The 2<sup>nd</sup> petitioner on the other hand proposes that distribution of the land be as follows –

- [particulars withheld] to go to the 1<sup>st</sup> petitioner and her children.
- [particulars withheld] to the 2<sup>nd</sup> petitioner and her child.

Reasons for the two proposed modes of distribution were given in the affidavits of both petitioners as well as in the further affidavit which was later filed by F J A the 2<sup>nd</sup> petitioner.

Section 40 of the Law of Succession Act (Cap.160) envisages as far as possible, equal distribution of the estate of a deceased person among living spouses and children. In my view therefore, the mode of distribution proposed by the 1<sup>st</sup> petition namely N N is more in line with the spirit of the law, as the value

of the respective parcels of land was not disclosed.

Though S S is still a minor, I see no justification to grant her a more favourable treatment. If the house on [particulars withheld] is rented, she should get her equal share of the income with the others therefrom. I am also not convinced that T S should get a larger portion of land in [particulars withheld]. I see no justifiable reason why he should be treated more favourably.

Consequently, I order that the two land assets above be distributed equally among the three children. The two widows (administrators) will have a life interest in the land. An amended confirmed grant be issued.

*Dated, signed and Delivered at Kakamega this 28<sup>th</sup> day of November, 2013*

**George Dulu**

**J U D G E**