

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 680 OF 2012

IN THE MATTER OF THE ESTATE OF H B T – DECEASED

AND

R N T 1ST PETITIONER

VERSUS

M A B 2ND PETITIONER

R U L I N G

This summons for confirmation of grant is contested. There are two wives to the deceased that is R N T and M A B. They do not agree on the mode of distribution of assets. M has two children J H B and A B. R on the other hand has three children. They are I K H, R B T, H N B.

The asset in question is only one. It is land parcel [particulars withheld]. R is of the view that M should get only 2 acres as the land had already been divided and demarcated on the ground. She contends that 4 acres of the 9 acres were held in trust by the deceased for his brother R O T. However, no separate titles were annexed to support the said demarcation.

In this matter, letters of administration were initially granted by the Senior Resident Magistrate Mumias in Succession cause No. 14 of 2010. No evidence has been placed before me to support the contention of R that R O T is entitled to inherit from the estate. In case R wants to come to court he is free to do so. I take it that the whole 9 acres of land belonged to the deceased and formed his estate.

In my view, the Law of Succession Act (Cap. 60), Section 40 is clear. The distribution, as much as practicable should be on equal basis among survivors, or dependants. All children whom the deceased treated as his children or dependants are to benefit equally.

Since the five (5) children are acknowledged, and there is no evidence that the deceased did not maintain any of them, I order as follows –

1. A fresh grant of letters of administration by this court is hereby issued.
2. The grant of letters of administration herein is confirmed.
3. The land will be distributed equally among the five (5) named children.

Dated, signed and delivered at Kakamega this 28th day of November, 2013

George Dulu

J U D G E