

REPUBLIC OF KENYA

IN THE HIGH COURT

AT MACHAKOS

Succession Cause 435 of 2010

**IN THE MATTER OF THE ESTATE OF WAMBUA MUTIE alias TILUS WAMBUA MUTIE -
DECEASED**

NICHOLAS MUTUA WAMBUA ADMINISTRATOR/PETITIONER

R U L I N G

Before me is a summons for confirmation of grant dated 19th July 2011. The affidavit sworn by Nicholas Mutua Wambua the petitioner on 19th July 2011 gives the proposed mode of distribution of the assets.

Three beneficiaries Benard Kasia Wambua, Patrick Muasya Wambua, and Alexander Kyalo Wambua objected to the proposed mode of distribution. They did not sign the consent for confirmation and proposed mode of distribution. They however, did not file their own proposal or proposals on the mode of distribution.

At the hearing of the summons, Benard Kasia and Alexander Wambua attended court. Patrick Wambua did not attend court. Other beneficiaries attended.

The objector Benard Kasia stated in court that he did not file a replying affidavit. He thought that the proposed division of the land assets was not fair. He appreciated that they had been given land to cultivate. The other objector present Alexander Wambua stated that plot 121 belonged to his father and brothers. It devolved from his grandfather. He acknowledged that Catherine, Winfred and Anna were his sisters. He stated that part of the land was sold to 3rd parties.

Learned counsel for the administrator Mr Kituku, submitted that the three objectors were not happy with sharing of the land with their sisters. Counsel stated that the deceased owned 1/5 of plot No. 121.

Having considered the summons, and rival submissions, I find no legal basis for the objection by the objectors. They were as much as possible, given an equal share through the proposed mode of distribution. They have also not filed any document to show their proposed mode of distribution. All children of a deceased person, are entitled to inheritance in intestacy, unless they choose of their own to waive their rights. Children are not discriminated on grounds of sex. Female children cannot therefore be excluded from inheritance. In my view, the proposed distribution is within the law. I find that the proposed distribution is fair.

Consequently, I confirm the grant. The assets will be distributed as proposed by the administrator.

Dated and delivered at Machakos this 19th day of June 2012.

George Dulu

Judge

In presence of:-

Ms. Thiongo holding brief for O.N. Makau for applicant

Benard Kasia – Objector present in person

Nyalo – Court clerk.