



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
Succession Cause 29 of 2010

IN THE MATTER OF THE ESTATE OF AMOS OUMA APIYO –(DECEASED)

RULING

This ruling is delivered in the Summons for Confirmation of Grant dated 26th October 2011 and filed on 23rd January 2012. The administratrix have sought to have the Grant issued to them on 8th July 2010 confirmed and for the approval of the distribution of the deceased's sole asset, (funds held in a bank account No. 0121010139764) valued at Kshs.998,218.95 as at 31st December 2011 distributed as follows:-

1. 50% to the widow
2. 50% to the three minor children of the deceased to be held in trust by their mother, the 1st administratrix.

Having been asked by the court to come up with a more equitable mode of distribution, the administratrix filed a further affidavit proposing that the widow still gets 50% of the estate while the minors share out the remainder in the percentages of 15% to the last child aged 4 years, 10% to the second child of 5 years and 15% to the 1st born of aged 11 years.

Asked why she would wish that the minors get a smaller share than herself, when under the law she would be entitled only to a life interest, the 1st applicant told the court that the children's education and related expenses were being taken care of under a sponsorship programme run by an entity called Chosen Children of Promise (CPP). The said entity has written to this court stating that it intends to support the minors herein

“until they complete their high school education and go through university or undertake a tertiary level (sic) as long as the family abides by the CPP memorandum of understanding”.

I have seen a copy of the Memorandum of Understanding filed at the request of the court on 27th April 2012. I do not consider it binding as in the nature of a continuing trust which would secure the education and/or other financial needs of the minor children.

The applicants have stated that the 50% which proposed for distribution to the widow would be applied towards

“general upkeep, maintenance and other general utilities of the children of the deceased”.

I have noted from the copy memorandum of understanding that over and above monthly supplementary food allotments to sponsored families, the sponsor also provides training for guardians, provided that they abide with the rules. I think the widow herein should think more of using her portion of the inheritance to start up a money making venture out of the training received. She is able to build on the amount awarded through the community based banking systems to improve on her lot, instead of spending half of the estate as proposed in the application, and endangering the same with depletion.

With the above in mind and considering the age of the minors herein view is that the most equitable and just distribution is as follows:-

1. Kshs.300,000/= to the widow.
2. Kshs.225,000/= to Molvine Akinyi Ouma
3. Kshs.236,500/= to Celestine Adhiambo Ouma
4. Kshs.236,500/= to Brandom Otieno Ouma.

The minors' interest shall be held by the widow in trust for them until they attain the age of majority. The same shall be invested in an interest bearing account to be opened with a reputable Financial Institution in the joint names of Dorothy Anyango Onyango (the widow) and the Registrar of the High Court.

The Grant to be confirmed in the above terms with leave to apply.

Orders accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 13th DAY OF JUNE, 2012.

M.G. MUGO

JUDGE

In the presence of :

for the applicant.