



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Succession Cause 710 of 2006

IN THE MATTER OF THE ESTATE OF GEORGE ADEMBA (DECEASED)

ELIZABETH ACHIENG ADEMBA APPLICANT

VERSUS

ROBERT GEORGE OLUOCH. RESPONDENT

R U L I N G

The Ruling of this court dated 24th July, 2007, modified a Grant of Letters of Administration issued to Robert George Oluoch by appointing Elizabeth Achieng Ademba as second Administrator of the estate of the late George Ademba. The two administrators were then ordered either to file a consented mode of distribution of the deceased's estate or each file a proposal as to how the court should distribute the estate.

The administrators who could not agree on distribution then filed their proposals and placed them before this court to decide on acceptable distribution.

I have carefully considered each proposal and doing my best, the following is the deliberation and the final decision on distribution.

The court was not properly advised by either party on the agreed list of assets forming the deceased's estate. Its conclusion on the list is accordingly as follows: -

1. L.R. No. 209/8294/134 – Residential House, South “C”
2. L. R. No. Sakwa/Alego/396 – Up country Home
3. Co-operative Bank A/c No. 0112007271500, proceeds now with the Public Trustee.
4. Afya Co-operative Savings Credit Society of Kshs.703,350/- released to Elizabeth as nominee.
5. AAR payment of Kshs.50,000/- released to Elizabeth as nominee.
6. Pan Africa Life Assurance Ltd Ksh.100,000/- released to Elizabeth as nominee
7. Salary arrears of deceased of Kshs.130,000/-

8. Donation of Kshs.20,000/- given by employers for funeral.

9. KEMRI proceeds to the deceased's estate.

I have carefully considered the submissions by both administrators who each represents one of the two wives or houses of the deceased. I find that the property L.R. No. 209/8294/134 is a residential house situated at South "C" in Nairobi. It was purchased before Elizabeth Achieng Ademba was married by the late George Ademba. There is no evidence that she contributed in any way towards its purchase. Moreover, the property was from the start registered in joint ownership with the first wife, Jane Awiti Ademba. The law as we understand it today, is that in a joint ownership registration which is not a tenancy in common, the share therein is indivisible. This means and leads on the death of one of the joint owners, that the whole share substance in the property remains in the surviving joint owner. In those circumstances, the title L.R. No. 209/8294/134, South "C" remained in the surviving registered joint owner who is Jane Awiti Ademba. This means that Elizabeth Achieng Ademba has no right of claim.

The second property under claim is L.R. No. Sakwa/Alego/396, found up country. There is evidence to show that it was acquired by the deceased for Elizabeth Achieng Ademba in the absence of Jane Awiti Ademba, who at the material time, had separated from the deceased. There is evidence of a residential house on the property built for Elizabeth Achieng Ademba while there is no similar structure on it for Jane Awiti Ademba. In these circumstances I hold that it was jointly acquired by the deceased and Elizabeth Achieng for her benefit and Jane Awiti contributed nothing to it. Jane cannot share in and from where she did not plant.

Thirdly there are proceeds from Co-operative Bank now held by the Public Trustee. Neither wife has a better claim over the other in respect to this fund. In my considered view therefore the sum will be divided equally.

Fourth, there is a sum in shares from Afya Co-operative Savings & Credit Society amounting to Kshs.703,350/-. The evidence on record shows that Elizabeth Achieng Ademba had been named as the nominee by the deceased from the whole start. Indeed acting on this nomination the Co-operative Savings and Credit Society released the amount to Elizabeth Achieng Ademba on 25th April 2006. The court will not disturb the deceased's clear intention.

Under the same law principle, Elizabeth Achieng Ademba, as nominee of the George Ademba by the latter's appointment, was paid kshs.50,000/- from AAR, and Kshs.100,000/- from Pan Africa Life Assurance. The court has no reason to disturb what had been deliberately set in place by the deceased.

Fifth, I hold that the proceeds expected from Kemri toward the deceased's estate will be divided equally between the wives.

Turning now to the outstanding liabilities of the estate, Kshs.770,000/- is said to be outstanding to Kenya Commercial Bank Limited. Both sides agree that the loan proceeds went to Elizabeth Achieng Ademba to start a fish business which runs to date. She is not even claiming that the business is not doing well. Indeed, the evidence advanced is that the business is doing quite well and forms the financial backing to the second wife's family. She should be thanking her late husband for thinking ahead for her future welfare.

Unfortunately Elizabeth thinks that those of the first house should share in repayment of the loan in respect of which she and her children alone enjoy the benefits. I find no basis upon which the first wife Jane Awiti and her children can be made to carry the financial burden intended for and now being enjoyed by Elizabeth Achieng and her family. It was further revealed that the deceased took the loan, not for the whole family of two wives and children, but for Elizabeth's family in particular. I find no denial of that evidence by Elizabeth Achieng. The conclusion I reach therefore is that she must carry her burden, a good and beneficial burden for that. She should repay the loan alone as she enjoys it alone.

The Kenya Commercial Bank Limited Credit Card on Account No. 41748200 00000607 of Kshs.48,678/-

or thereabout and Sport Club debit of Ksh.12,797/- will be shared equally between Jane Awiti and Elizabeth Achieng. It must have been created for the benefit of the deceased and his welfare.

ORDERS

1. All the conclusions and findings herein above are hereby made orders of the court.
2. Each party to bear own costs.

Dated and delivered at Nairobi this 13th day of October, 2009.

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D A ONYANCHA

JUDGE