

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU
Succession Cause 15 of 199

IN THE MATTER OF THE ESTATE OF THE LATE EDINA TSIYELI

ZIPPORAH ONZE.....PETITIONER

VERSUS

SAMMY MAVALAH.....OBJECTOR

JUDGMENT

The letters of administration in respect of the estate of the late Edina Tsiyeli were issued to Zipporah Onzere on the 19th January 1995. It is not in dispute that the deceased was survived by four children namely:

Zipporah Onzere – daughter,

Elizabeth Idobega – Daughter,

Rose Migare – daughter and

Sammy Mavala – Son.

The deceased only asset was plot known as Pangani (*Nakuru Municipality Plot No. 357*). After the grant was issued in 1995, the original court file seems to have disappeared and the petitioner applied for the reconstruction of the court file. Another file was opened following the order of reconstruction was issued on 10th December 2007. On 3rd December 2007, the petitioner applied for the confirmation of the grant and prayed that the deceased's only property be registered in the names of all the beneficiaries in equal shares. Zipporah, Elizabeth and Rose duly consented and approved this proposed mode of distribution. Sammy Mavala however did not give his consent. He filed an affidavit stating that since the death of the deceased he as the last born son had been residing on the Plot No. 357 Pangani which measures only 40 x 50 ft. He also claimed that he paid the rates and the loan owing to the National Housing Corporation all amounting to Kshs 180,000/= which should be taken into account should the plot be shared with his sisters who refused to pay the outstanding rates.

The only issue in this succession cause is the distribution of the deceased's estate among the deceased's children. The relevant section of the law is **section 38** of the **Law of Succession Act** which provides as follows:

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

This court cannot exclude any of the children of the deceased. The property of the deceased shall vest upon the four beneficiaries in equal shares. The parties will be at liberty to sell the plot and share the proceeds equally. In this case, Sammy Mavala may opt and will have the 1st option to buy out his sisters. This will envisage the plot being valued to establish its value. The rental income that the objector has benefited from since he started occupying the premises to the exclusion of the sisters should also be taken into account. The amount of money paid by the objector towards the National Housing Corporation and

the rates to the Municipal Council of Nakuru should also be taken into account. The net proceeds should be shared among the beneficiaries equally. The letters of administration may be confirmed accordingly. Costs of the application are borne by the parties this being a family matter.

Judgment read and signed on this 9th day of May 2008.

M. KOOME

JUDGE