



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII**

Succession Cause 53 of 2007

IN THE MATTER OF: The Estate of Lameck Omwoyo (Deceased)

AND

IN THE MATTER OF: An Application by

1. Mary Omwoyo

2. Jared Ogecha Ongiri (for Confirmation of Grant)..... APPLICANTS

RULING

The administrators of the Estate of Lameck Omwoyo are Mary Omwoyo and Jared Ogecha Ongiri. On 14th October, 2008 the administrators applied for confirmation of the Grant of Letters of Administration issued by this court to them on 18th February 2008. The deceased left behind his widow, Mary Omwoyo (1st applicant) and two minors, Moses Mogire Omwoyo and Erick Ongau Omwoyo aged 15 and 12 years respectively. The three are the beneficiaries of the deceased's Estate. The deceased's estate consists of the following:

- (i) Kshs.75,000/= at Ufundi Sacco.
- (ii) Kshs.6,000/= at the Co-operative Bank of Kenya Ltd.
- (iii) Motor vehicle Reg. No.KAG 043A.
- (iv) Death Gratuity of Kshs.300,000/=.
- (v) Plot No.2682 at Kisii.

In their affidavit in support of the aforesaid application the two administrators proposed that the estate be apportioned as follows:

(a) The Kshs.75,000/= at Ufundi Sacco be spent in completion of a servant quarter that was partially constructed by the deceased.

(b) Motor Vehicle Reg. No. KAG 043A be sold and the proceeds thereof utilized in paying a balance of Kshs.170,000/= in respect of parcel No.2682, Kisii.

(c) Of the Kshs.300,000/= Death Gratuity, Kshs.20,000/= be paid to Mary Omwoyo for upkeep of the two minor beneficiaries, Kshs.80,000/= to be paid to Mary Omwoyo to enable her pay school fees for the aforesaid minor beneficiaries and the balance of Kshs.200,000/= to be utilized in construction of a permanent house at the aforesaid plot.

(d) Plot No.2682 to be transferred to Mary Omwoyo.

(e) Kshs.6,000/= at the Co-operative Bank of Kenya to be paid to Mary Omwoyo to satisfy other domestic or household needs.

Section 58 of the **Law of Succession Act Cap 160** requires that where a continuing trust arises the Grant of Letters of Administration shall not be made to one person alone except where that person is the Public Trustee or a Trust Corporation. The underlying objective of this provision is to safeguard the interests of minor beneficiaries of the estate.

The mode of distribution of the Deceased's estate proposed by the administrators herein is not in the best interests of the minors neither is it in strict conformity with the law. Where an intestate leaves behind a spouse and children the surviving spouse is entitled to the personal and household effects of the deceased absolutely and a life interest of the net intestate estate. The spouse holds the property in trust for the children of the deceased. The life interest operates as a safeguard for the children of the deceased in cases where the surviving spouse is likely to waste the estate.

In this particular case, I have no objection to utilization of the deceased's estate in the manner as proposed by the administrators except with regard to Plot No.2682. The plot shall be registered in the joint names of the two administrators who shall hold the same in trust for the benefit of the minor beneficiaries, Moses Mogire Omwoyo and Eric Ongau Omwoyo.

Upon attainment of the age of majority by the minors, the aforesaid property shall be registered in the joint names of Mary Omwoyo and the two sons of the deceased. The deceased's spouse shall have life interest of the same.

DATED, SIGNED and DELIVERED at KISII this 4th day of November, 2008

D. MUSINGA

JUDGE

Delivered in the open court in the presence of:

1. Applicants.

D. MUSINGA

JUDGE