



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Fredrick Rephas Omukoko (Deceased) (Succession Cause  
208 of 2006) [2025] KEHC 1575 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1575 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 208 OF 2006  
SC CHIRCHIR, J  
FEBRUARY 20, 2025**

**IN THE MATTER OF THE ESTATE OF FEDRICK REPHAS OMUKOKO (DECEASED)**

**BETWEEN**

**EUNICE WAKA OMUKOKO ..... PETITIONER**

**AND**

**JOSEPH M OMUKOKO ..... 1<sup>ST</sup> OBJECTOR**

**LAVINA ASHIOYA ..... 2<sup>ND</sup> OBJECTOR**

**RULING**

1. What is coming up for determination is the summons for confirmation of grant dated 10<sup>th</sup> May, 2017. It seeks for the confirmation of the letters of administration issued on 5<sup>th</sup> May, 2009. The application is supported by the affidavit of the petitioner.
2. The available Assets are given as land parcel No. Marama / Shinamwenyuli/1682 and 2090 and the Petitioner proposes to distribute the two parcels between the deceased's five beneficiaries in equal portions.
3. The application is opposed by the respondents and in their grounds of objection dated 5<sup>th</sup> December, 2017 they have raised the following grounds:
  - a). That the proposed distribution of the estate has not been done in accordance with the law
  - b). That the petitioner has failed to disclose and include all the assets of the deceased at the time of his death
  - c). That all the dependants of the deceased have not given a consent to the mode of distribution of the estate and the consent to confirmation of grant



- d). That the application has been made by making false statements and concealment of material information to the case
  - e). That the petitioner has not given a full account of the utilization of proceeds from the following accounts:A/C No. 40428XXXX National Bank of Kenya, Barclays Bank of Kenya A/C No.456XXXX & A/C No. 49XXXX Shinamwenyuli
  - f). That the petitioner is intermeddling in the estate to the extent that she has gone ahead to lease a portion of L.R. No. Marama/Shinamwenyuli/1682 without involvement of the dependants of the deceased.
  - g). That the application has not been brought in good faith of the fact that the petitioner has failed to disclose the fact that the petitioner was married to Hellen Wambo with whom they sired three children.
  - h). That the mode of distribution of the estate in the petition has been made contrary to the wishes of the deceased.
4. In response, the petitioner filed an affidavit dated 9<sup>th</sup> April 2018 , in which she states that she was a 2<sup>nd</sup> wife to the deceased herein and was not aware that the deceased had another wife at the early stages of their marriage. That later the said first marriage was dissolved. It was dissolved on 6<sup>th</sup> July,2001 vide a Decree at SPM Courts at Eldoret, Divorce Cause No.15 of 2000.
  5. She further states that she is aware that in that first ,marriage the deceased begot three children with Hellen Wambo, Namely; Godfrey Eugene Okana Omukoko (dcd), Joseph M.S. Omukoko and Lavina Ashioya Omukoko.
  6. The petitioner further avers that at the time of the death of the deceased, he was survived by herself and her daughter Elizabeth J.O. Omukoko, and the respondents. That it is only after the death of the deceased herein that the objectors mother claimed that she was a wife of the deceased yet she was already living in Nairobi with another husband.
  7. She further stated inter alia that she has included all the beneficiaries of the deceased save for Hellen Wambo who had formally divorced the deceased and was married to another person as aforesaid.
  8. The Applicant admits that she had leased a portion of land for her substance and her daughter as she was a peasant farmer, had no gainful employment after she was widowed.
  9. On the funds alleged to have been in the deceased Bank Accounts she sates that the funds were distributed equally to the objectors, their mother and herself .
  10. At the hearing on 12<sup>th</sup> February, 2024, the court directed that the matter be canvassed by way of written submissions. The petitioners filed their submission dated 4<sup>th</sup> April,2024, however the objectors did not.

**The Applicant's submissions.**

11. It was the petitioner's submission that the petitioner was the only surviving widow of the deceased; that she has the right and slightly ranks high in capacity when it comes to the line of consanguinity in petitioning for the letters of administration than the objectors who are the deceased's children
12. Further, that the proposed mode of distribution by the petitioner is fair and just in the circumstances.



## Determination

13. I have considered the Application and the response to it. As a result, I find that the key issues for determination are:
- a. whether the objector's mother is a dependant to the deceased estate
  - b. whether the grant of letters of administration intestate issued to the petitioner ought to be confirmed.
14. It is the he objectors case that the petitioner did not include their mother as a beneficiary. Better and more particulars were not provided by the petitioners. However it emerged from the Applicant's response that the respondents mother and the deceased had divorced by the time of his demise . Having been divorced, is the objector mother considered to be a surviving spouse?
15. In The Law of Succession Justice William Musyoka at Page 100, stated as follows:
- “For the purpose of the rules of intestacy, a divorced spouse has no rights to the intestate's estate; a judicially separated spouse is, however, entitled. This applies to all legal marriages whether contracted under statute or customary law. Customary law marriages include the woman-to-woman marriage arrangements. Under Section 3(1) of the *Law of Succession Act*, a separated wife is considered a wife for succession purposes. The divorced spouse may make a claim under the family provisions in Section 26 of the *Law of Succession Act* for reasonable provision from the estate. The definition in Section 29 of a dependant for the purpose of Section 26 includes a former wife or former wives recognized as such and protected under Section 3(5) of the *Law of Succession Act*.”
16. Therefore, having been divorced from the deceased at the time of his device , the respondent's mother could not be regarded as a spouse or one who was being maintained by the deceased.

## Whether the grant should be confirmed.

17. It is not in dispute that the deceased had married more than once during his lifetime and had a total of 4 children from the two marriages. The mode of distribution therefore is the one provided under section 40 of the *law of succession Act* The section provides as follows: (1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.
- (2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38
18. The Applicant has proposed to distribute the Assets to all the beneficiaries in equal portions , herself included as she is an additional unit within the context of section 40 as aforesaid. The Applicant's proposal is therefore in tandem with the above cited section 40 of the Act
19. I therefore find that the proposed mode of distribution by the Applicant is founded on law and this court adopts it.
20. In the end I hereby proceed to make orders as follows:
- a). The Grant herein is hereby confirmed.



- b). Land parcel Nos. Marama / Shinamwenyuli/ 1682 and 2090 shall be distributed in equal shares to:
- i). Eunice Waka Omukoko
  - ii). The Estate of Godfrey Eugene Okana Omukoko
  - iii). Joseph M.S Omukoko
  - iv). Lavina Ashioya Omukoko
  - v). Eliza J.O Omukoko

21. Right of Appeal- 28 days.

**DATED, SIGNED AND DELIVERED AT ISIOLO ,VIA MICROSOFT TEAMS , THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025.**

**S. CHIRCHIR**

**JUDGE.**

In the presence of:

Godwin Luyundi- Court Assistant.

