



**In re Estate of Zebedeus Willbrodeus Obinchu (Deceased) (Probate & Administration 2 of 2016) [2025] KEHC 4585 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4585 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
PROBATE & ADMINISTRATION 2 OF 2016  
WA OKWANY, J  
MARCH 20, 2025  
IN THE MATTER OF THE ESTATE OF ZEBEDEUS  
WILLBRODEUS OBINCHU------(DECEASED)**

**BETWEEN**

**JACKLINE BONARERI OBINCHU ..... 1<sup>ST</sup> PETITIONER**

**FENANDES SURE OBINCHU ..... 2<sup>ND</sup> PETITIONER**

**AND**

**PENINA KERUBO KERAMA ..... PROTESTOR**

**RULING**

1. In a ruling delivered in this matter on 5<sup>th</sup> December 2024 (hereinafter “the earlier Ruling”), this court found that while the beneficiaries of the estate of the deceased herein, comprising of 8 children (2 sons and 6 daughters), had agreed on the distribution of part of the deceased’s estate being Kitutu Settlement Scheme/12 to all the beneficiaries in equal shares, they were yet to agree on how to share out LR No Wanjare/Bogitaa/XXXX.
2. The court directed the beneficiaries to resolve the issue of the distribution of the said remaining parcel through mediation which was to be conducted within 45 days from the date of the said earlier ruling.
3. When the matter came up for mention on 5<sup>th</sup> February 2025 for purposes of finding out if the parties had arrived at a mediation settlement, counsel for the Petitioners informed the court that the parties did not initiate any mediation. Counsel urged the court to determine the issue of the distribution of LR No Wanjare/Bogitaa/XXXX.
4. Distribution of the estate of a deceased is provided for under sections 38 and 40 the Law of Succession Act (hereinafter “the Act”). Section 40 of the Act 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.
5. Section 38 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 shall be equally divided among the surviving children.
6. Section 38 of the Act is clear that the net intestate estate shall be divided equally among the surviving children. In the instant case, I have already stated that the deceased's children are unable to agree on the distribution of LR No Wanjare/Bogitaa/XXXX. Consequently and in compliance with the provisions of Section 38 of the Act, I find that the said parcel of land should be distributed equally among all the 8 beneficiaries.
7. I make no orders on costs since all the parties herein are siblings.
8. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 20<sup>TH</sup> DAY OF MARCH 2025.**

**W. A. OKWANY**

**JUDGE**

