



**In re Estate of Abraham Mulama Owour (Deceased) (Succession Cause  
251 of 1997) [2025] KEHC 3113 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3113 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 251 OF 1997  
SC CHIRCHIR, J  
MARCH 13, 2025**

**IN THE MATTER OF THE ESTATE OF ABRAHAM MULAMA OWOUR (DECEASED)**

**BETWEEN**

**FRANCIS KADIMA ..... 1<sup>ST</sup> PETITIONER**

**MICHAEL MALALA ..... 2<sup>ND</sup> PETITIONER**

**GEOFFREY MAKAU ..... 3<sup>RD</sup> PETITIONER**

**AND**

**VALERIA MULAMA ..... OBJECTOR**

**AND**

**ADELIDE KHISA MULAMA ..... APPLICANT**

**RULING**

1. What is coming up for determination is the summons of confirmation of grant dated 04/8/2022. It is brought by Adelaide Khisa Mulama, one of the Administrator of the Estate (hereafter referred to as the Applicant). She has provided a list of 30 survivors and two immovable Assets
2. The two Assets are Marama/Shinamwenyuli/146 (Parcel 146) and Marama/Shinamwenyuli/146 (Parcel 146) . She proposes that Parcel 146 be shared between Ruth Okado, Peter Mumia and George Mulama while the rest of the survivors share land Parcel No. 46.
3. The summons attracted a protest by the fellow Administrators Valeria Mulama and Geoffrey Makau Mulama whom I shall hereafter refer to as the 1st and 2nd protestors respectively.
4. The first protestor argues that the applicant's proposed mode of distribution is unequal, disproportionate, unfair and discriminatory against the rules of natural justice and a recipe for further dispute amongst the beneficiaries.



5. She has proposed a mode of distribution in which Parcel No. 46 will be shared equally between the survivors with each getting 1.42 acres. Her proposal is silent on Parcel No. 146.
6. The 2nd protestor filed a replying affidavit (sic) to the summons. He alleges the Applicant's mode of distribution has taken into account the deceased's grand children and other persons who are strangers to the estate. He further states that the distribution of the property should be equal as earlier directed by the court.

### **Determination**

7. From the perusal of the record it is evident that the deceased was polygamous, and was survived by his two wives and children. The appropriate mode of distribution is therefore the one set out in section 40 which sets out the mode of distribution where a deceased is polygamous Section 40 (1) and (2) of the law of succession 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.
8. Thus the applicant ought to have listed the survivors, grouped as per each house. Further the Applicant has described some of the beneficiaries as grandchildren. The grandchildren do not have any right to inherit from their grandparents unless their own parents predeceased the deceased. The applicant has introduced the grandchildren without laying a basis for their inclusion. She needs to state if the parents of the said children are dead or alive.
9. Finally, there is no evidence showing that the deceased owned parcel Nos. 46 and 146. Although there were several references, on record, to the two properties, no titles deeds or certificates of official searches have been submitted to prove ownership by the deceased.
10. In view of the foregoing, I will postpone the confirmation of Grant and direct as follows:
  - a) To Applicant to provide a list of all the deceased's children, grouped according to houses.
  - b) Where any of the children is deceased, it should be indicated and further stated whether he/she left behind the children.
  - c) To provide documents of ownership by the deceased of Parcel No. North/Wanga/Matungu/46 and Marma/Shinmwenyuli/146.
  - d) To provide a fresh mode of distribution taking into consideration the above two properties.
  - e) The other Administrator or beneficiaries will be at liberty to file a protest to the fresh mode of distribution.
  - f) Leave is hereby granted to the parties to file further or supplementary Affidavit for purposes of compliance as aforesaid.
  - g) This matter to be mentioned on a date to be given during the delivery of this ruling by purposes of confirming compliance.



**DATED , SIGNED AND DELIVERED VIRTUALLY AT I SIOLO THIS 13<sup>TH</sup> DAY OF MARCH 2025.**

**S. CHIRCHIR.**

**JUDGE.**

In the presence of :-

Godwin Luyundi- Court Assistant

Mr. Ligare for the Applicant

Mr. Shihoya for the protestor

