



**In re Estate of John Mukanda Mukonambi (Deceased) (Succession Cause
327 of 2011) [2024] KEHC 8923 (KLR) (19 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8923 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
SUCCESSION CAUSE 327 OF 2011**

DK KEMEL, J

JULY 19, 2024

BETWEEN

JOSPEH MUKONAMBI MUKANDA PETITIONER

AND

CATHERINE NANYAMA SIRENGO 1ST OBJECTOR

DORCASE NALIAKA MUKANDA 2ND OBJECTOR

JUDGMENT

1. Catherine Nanyama Sirengo and Dorcas Naliaka Mukanda, the Protestors herein filed an affidavit of protest sworn on 26th January 2024 against the summons for confirmation of grant dated 9th January 2024.
2. They averred that they are dependents in the estate of the late John Mukanda Mukonambi (deceased), who died domiciled in Kenya on 13th July 1990 and who died intestate. They stated that they have been left out of the list of beneficiaries and that the Petitioner divided the estate of the deceased to the exclusion of widows of the deceased as their share ought to have been left for the daughters.
3. The Petitioner filed a statement in response to the objections by the 1st and 2nd Objectors wherein he states that he is the eldest son of the deceased herein and that the 1st objector is his sister from the same house and that she got married in 1984. According to him, prior to his demise, the deceased shared out all his parcel of land among his sons and no daughter was allocated any portion. He states that all his sisters never came to ask for land and that the sons settled with their children on the said shares. He states that the deceased was survived by nine sons and ten daughters and that none of the daughters made a claim for land. He states that at the demise of his father, the 1st Objector returned home where she hosted him and gave her a portion to till on until she managed to purchase another parcel at Chereng'anyi where she is settled to date. He states that when sharing the deceased's parcel of land, he gave her a portion measuring 0.25 acres. He states that during the pendency of the case, the 1st



Objector influenced the 2nd Objector from the 2nd house to lodge an objection just to frustrate him in the distribution process. He sought for the dismissal of the protests.

4. *Vide* Court directions, the affidavit of protest was to be canvassed by way of written submission. All the parties filed and exchanged their respective submissions.

5. I have considered the pleadings and written submissions by the parties herein and it is clear that when the deceased distributed his land to his children he only focused on his sons to the exclusion of his daughters. It is disputed by the Protestors that the properties were not properly distributed hence unfair distribution and tantamount to discrimination. Under the provisions of rule 73 of the *Probate and Administration Rules*, the Court has inherent power to make such orders as are expedient to meet the ends of justice. The same provides as follows:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

6. Section 42 of the *Law of Succession Act* is instructive on this as it provides

Where:-

(a) An intestate has, during his lifetime or by will paid, given or settled any property for or the benefit of a child, grandchild or house; or taken had he not predeceased the intestate. That property shall be taken into consideration in determining the share of the set intestate estate finally, accruing to the child, grandchild or house.

7. Section 42 provides that during the distribution of the estate, previous benefits be taken into consideration when determining the share of each child. In my view, the 1st Protestor raised sufficient grounds in her affidavit in support of her Protest. Indeed, there is sufficient evidence that the mode of distribution was unfair since the petitioner agrees that when the deceased was sharing his land, he did not do so to his daughters but only to his sons. It is instructive that the petitioner’s consent to distribution has not been signed by some of the beneficiaries. It is also instructive that during the evidence of the 1st Protestor while prosecuting her objection to the making of a grant, she averred that the clan elders allocated her three acres of land but which was taken over by the petitioner. It is now imperative that a fresh schedule of distribution should be filed by the Petitioner incorporating all the assets as well as the proposed scheme of distribution to the beneficiaries equally between all the children of the deceased and that any of the beneficiaries who does not wish to be catered for is at liberty to renounce their claim/share. In this regard, the Petitioner is to officially give the daughters of the estate of the deceased the opportunity to appear before Court and refute the portions allocated instead of assuming that they were not interested in inheriting from their father’s estate. The Petitioner must now go back to the drawing board and do the right thing.

8. In the result it is my finding that the Protestors Protest has merit. The same is allowed. The following orders are hereby issued:

a. The proposed mode of distribution presented by the Petitioner is hereby struck out.

b. The Petitioner is directed to meet all beneficiaries and agree on an acceptable mode of distribution and thereafter file a supplementary affidavit annexing the new mode of distribution of all assets of the deceased to all beneficiaries in the estate together with a signed consent by all beneficiaries within thirty (30) days from today. The beneficiaries who wish to



renounce their claim to do so by filing the requisite affidavits. In default, this court will proceed to distribute the estate equally among the beneficiaries.

- c. Upon compliance of (b) above, the Petitioner to set down the Summons for confirmation of grant on priority basis.
- d. Each party to bear their own costs.

It is so ordered.

DATED AND DELIVERED AT BUNGOMA THIS 19TH DAY OF JULY 2024.

D. KEMEI

JUDGE

In the presence of:

No appearance for Petitioner

Miruka for Onyando for Protestors

Kizito Court Assistant

