



**In re Estate of Alexander Werimo Rupia (Deceased) (Succession Cause 2735 of 2001) [2024] KEHC 16077 (KLR) (Family) (22 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 16077 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE 2735 OF 2001  
EKO OGOLA, J  
OCTOBER 22, 2024**

**BETWEEN**

**WILLIAM WERIMO RUPIA ..... PETITIONER**

**AND**

**LORNA SINZORE RUPIA ..... RESPONDENT**

**JUDGMENT**

1. The Summons for confirmation of grant before this court is dated 27<sup>th</sup> June 2008. The deceased died testate on 12<sup>th</sup> August 2001. He was survived by the following children: William Werio Rupia, Mary Matilda Muleshe Ngaruma, Lorna Sinzore Rupia, and Sussanah Sarah Shibia. The deceased was also survived by eight grandchildren.
2. Grant of Letters of Administration with written Will Annexed was issued to William Werimo Rupia and Lorna Sinzore Rupia on 24<sup>th</sup> September 2003. The administrators were requested to file their proposed mode of distribution.

William's proposed mode of distribution

- a. Marama/Shirotsa/1453- To be shared equally amongst William Rupia, Doris Ofisi, Sussanah Shibia, and Cedric Ofisi.
- b. Marama/Shirotsa/726- to be bequeathed to Arnold Alexander Rupia Namai
- c. Marama/Shinamwenyuli/687- to be bequeathed to William Rupia
- d. LR No. 1664/44 (Grant IR 3481) -be registered in the name of William Rupia to hold in trust for the family.
- e. Marachi/Elukongo/2357-to be bequeathed to Bethseba Ambetsa



- f. Marachi/Elukongo/1885- to be shared equally amongst Brendah Ofisi, Cedric Ofisi, Melvins Rupia Ofisi, Arnold Rupia Namai, and Marylyn Namai. (the deceased grandchildren)
  - g. Funds held in Housing Finance Company- to be shared equally amongst Brendah Ofisi, Cedric Ofisi, Melvins Rupia Ofisi, Arnold Rupia Namai, and Marylyn Namai, and legal fees.
- Lorna's proposed mode of distribution
- a. Marama/Shirotsa/1453- (family homestead)- to be shared equally amongst Susan Rupia and Lorna Rupia
  - b. Marama/Shirotsa/726- This was to go to Arnold Alexander Rupia. However, since he is deceased, the same should go to his sister Marylyn Namai who has two children.
  - c. Marama/Shinamwenyuli/687- To be distributed equally to all the beneficiaries.
  - d. LR No. 1664/44 (Grant IR 3481)- (Commercial plot) To be distributed equally to all beneficiaries.
  - e. Marachi/Elukongo/2357-to be bequeathed to Bethseba Ambetsa (the deceased sister)
  - f. Marachi/Elukongo/1885-To be bequeathed to the late Philip Rubia's children and be registered in the name of Cedric Rubia.
  - g. Marama/Shirutsa/1454-to be bequeathed to William Rupia.
  - h. Monies in Housing Finance-There are no more funds in the said account. The funds were withdrawn years ago to cater for school fees.
  - i. Shares in Brooke Bond Kenya-To be shared equally amongst the beneficiaries.
  - j. Shares in Housing Development Bond – To be shared equally amongst the beneficiaries.

### **Determination**

3. I have considered the proposed mode of distribution by the administrators and the entire record of the court. William submitted that the deceased died testate. Therefore, the estate should be distributed according to his wishes as stipulated in the Will.
4. On the other hand, his co-administrator submitted that this court on 21<sup>st</sup> May 2008 directed that the estate be considered and distributed as intestate. She argued that the Will bequeathed a substantial part to William while disinheriting her and her sister Mary Matilda. However, a small portion of the estate was bequeathed to Susan Rupia a portion that was less than what the other beneficiaries received. According to Lorna, the petitioner had deposed that the residual estate be divided amongst the grandchildren. However, according to his mode of distribution, not all the grandchildren have been considered.
5. According to the deceased Will dated 1972, his residual trust estate was to be divided into 20 shares in the following manner:-
  - a. 3/20-to Philip Ofisi (deceased son)
  - b. 3/20-to Wiiliam Werimo (deceased son)
  - c. 3/20 to Richard Rupia (deceased son)
  - d. 3/20-to Namaan Namai (deceased son)



- e. 2/20- to Helen (deceased widow) at her death or remarriage, the portion to be bequeathed to the deceased 3 sons
  - f. 2/20-to Mary Muleshe (deceased daughter) on condition that she remains a spinster. Share to be bequeathed to the deceased 3 sons upon her death or marriage.
  - g. 2/20-to Susan Shibia (deceased daughter) on condition that she remains a spinster. Share to be bequeathed to the deceased 3 sons upon her death or marriage.
  - h. 2/20-to Lorna Sinzore (deceased daughter) on condition that she remains a spinster. Share to be bequeathed to the deceased 3 sons upon her death or marriage.
    - i. If any of the sons precede the deceased in death or die before attaining the age of 21, the share to be bequeathed to the remaining brothers or children.
6. Philip Ofisi, Richard Rupia and Naaman Namai preceded the deceased in death. Richard Ropia died without leaving any children. Also, Mary and Lorna married before the death of the deceased, while Susan remained a spinster.
  7. There is nothing on record suggesting that the estate should be distributed as intestate. Also, the Will has not been controverted. The only issue that arises is the interpretation of the Will.
  8. The First Schedule of the [Law of Succession Act](#) provides for the Construction and interpretation of a Will. The principles for interpreting a Will according to the said schedule are as follows: the court construes Wills, it does not remake them; words are construed in their ordinary natural sense; the Will must be read as a whole; and the Will must speak for itself.
  9. Furthermore, the ‘armchair principle’ dictates that the court is entitled to put itself in the position of the testator, and to declare what is the intention evidenced by those words with reference to the facts or circumstances which were (or ought to have been) in the mind of the testator when he used those words.
  10. Section 26 of the [Law of Succession Act](#) provides for the dependants who are not adequately provided for by the Will. It stipulates as follows:-
 

“Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased’s estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased’s net estate.”
  11. What was the intention of the testator? From the wording of the Will, the testator intended that all his children inherit from his Will. The sons were to inherit a bigger percentage compared to the daughters. Since the deceased widow died, her share of 2/20 was to go to the sons. Also, the deceased son, Richard Rupia died without leaving any children. Therefore, his share devolved to the sons. Therefore, the remaining three sons were to inherit 14/20 of the estate.



12. Since Lorna and Mary married, their share was to devolve to the brothers. Lorna argued that the Will ousted her and her sister Mary from inheritance of the estate. Can a testator's testamentary freedom be limited? Section 26 of the Law of Succession Act provides for the dependants who are not adequately provided for by the Will. It stipulates as follows:-

“Where a person dies after the commencement of this Act, and so far as succession to his property is governed by the provisions of this Act, then on the application by or on behalf of a dependant, the court may, if it is of the opinion that the disposition of the deceased's estate effected by his will, or by gift in contemplation of death, or the law relating to intestacy, or the combination of the will, gift and law, is not such as to make reasonable provision for that dependant, order that such reasonable provision as the court thinks fit shall be made for that dependant out of the deceased's net estate.”

13. Section 26 of the Act must be read together with Section 28 of the Act which provides as follows:-

“In considering whether any order should be made under this Part, and if so what order, the court shall have regard to

- (a) the nature and amount of the deceased's property;
- (b) any past, present or future capital or income from any source of the dependant;
- (c) the existing and future means and needs of the dependant;
- (d) whether the deceased had made any advancement or other gift to the dependant during his lifetime;
- (e) the conduct of the dependant in relation to the deceased;
- (f) the situation and circumstances of the deceased's other dependants and the beneficiaries under any will;
- (g) the general circumstances of the case, including, so far as can be ascertained, the testator's reasons for not making provision for the dependant.”

14. These two provisions are not meant to give an equal share to any excluded dependant. The reason why Lorna and Mary have been disinherited is because they are married. The deceased allocated a portion of his estate on the condition that they remained a spinster. In my view, Lorna and Mary should not be disinherited. It is for these reason that I distribute the deceased estate in the following manner:-



	Property	Beneficiary	Percentage
1	Marama/ Shirotsa/1453	Philip Ofisi's children William Werimo Naaman Namai's children Mary Muleshe Susan Shibia Lorna Sinzore	3 out of 14/20 3 out of 14/20 3 out of 14/20 2/20 2/20 2/20
2	Marama/ Shirotsa/726	Philip Ofisi's children William Werimo Naaman Namai's children Mary Muleshe Susan Shibia Lorna Sinzore	3 out of 14/20 3 out of 14/20 3 out of 14/20 2/20 2/20 2/20
3	Marama/ Shinamwenyuli/687	Philip Ofisi's children William Werimo Naaman Namai's children Mary Muleshe Susan Shibia Lorna Sinzore	3 out of 14/20 3 out of 14/20 3 out of 14/20 2/20 2/20 2/20
4	LR No. 1664/44 (Grant IR 3481)	Philip Ofisi's children William Werimo Naaman Namai's children Mary Muleshe Susan Shibia Lorna Sinzore	3 out of 14/20 3 out of 14/20 3 out of 14/20 2/20 2/20 2/20
5	Marachi/ Elukongo/2357	Philip Ofisi's children William Werimo Naaman Namai's children	3 out of 14/20 3 out of 14/20 3 out of 14/20 2/20



		Mary Muleshe Susan Shibia Lorna Sinzore	2/20 2/20
6	Marachi/ Elukongo/1885	Philip Ofisi's children William Werimo Naaman Namai's children Mary Muleshe Susan Shibia Lorna Sinzore	3 out of 14/20 3 out of 14/20 3 out of 14/20 2/20 2/20 2/20
7	Marama/ Shirutsa/1454	Philip Ofisi's children William Werimo Naaman Namai's children Mary Muleshe Susan Shibia Lorna Sinzore	3 out of 14/20 3 out of 14/20 3 out of 14/20 2/20 2/20 2/20
8	Monies in Housing Finance	Philip Ofisi's children William Werimo Naaman Namai's children Mary Muleshe Susan Shibia Lorna Sinzore	3 out of 14/20 3 out of 14/20 3 out of 14/20 2/20 2/20 2/20
9	Shares in Brooke Bond Kenya	Philip Ofisi's children William Werimo Naaman Namai's children Mary Muleshe Susan Shibia Lorna Sinzore	3 out of 14/20 3 out of 14/20 3 out of 14/20 2/20 2/20 2/20
10	Shares in Housing Development Bond	Philip Ofisi's children William Werimo	3 out of 14/20 3 out of 14/20



		Naaman Namai's children	3 out of 14/20 2/20
		Mary Muleshe	2/20
		Susan Shibia	2/20
		Lorna Sinzore	

15. From the foregoing, 14/20 of the deceased estate shall be shared equally amongst William Werimo and the children of the late Philip Ofisi and Naaman Namai. The remaining 6/20 of the estate shall be shared equally amongst Mary Muleshe, Susan Shibia, and Lorna Sinzore. The beneficiaries had mentioned the deceased sister Bethseba Ambetsa who was allegedly gifted Marachi/Elukongo/2357. The Will did not mention any bequeathal to Bethseba Ambetsa. However, the beneficiaries are at liberty to transfer the said property to her.

Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF OCTOBER 2024.**

.....

**E.K. OGOLA**

**JUDGE**

In the presence of:

Mr. Mutie h/b for Muriuki the 1<sup>st</sup> Administrator.

Mr. Wachira for the 2<sup>nd</sup> Administrator

M/s Gisiele M Court Assistant.

