



**In re Estate of WM (Deceased) (Succession Cause 128 of 2008)  
[2023] KEHC 3935 (KLR) (19 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3935 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 128 OF 2008**

**REA OUGO, J**

**APRIL 19, 2023**

**IN THE MATTER OF THE ESTATE OF THE LATE WM - DECEASED**

**BETWEEN**

**MNN ..... PETITIONER**

**AND**

**JNW ..... PROTESTOR**

**RULING**

1. WM died on the May 26, 1995. MNN (M) the deceased’s daughter in law filed a petition for letters of administration intestate. In her affidavit in support of the petition the petitioner named the following as the persons who survived the deceased;
  - a. TWW.....widow ( now deceased)
  - b. JNW.....widow
  - c. JWW.....son ( now deceased )
  - d. JNW.....son ( now deceased)
  - e. MNN.....daughter in law
  - f. SNW.....daughter
  - g. SWW.....son
  - h. MWW.....son
  - i. EW.....son
  - j. EW.....daughter



- k. AKW.....Adopted son
  - l. CW.....daughter
2. The petitioner was issued with a grant on the February 7, 2012. On the December 6, 2016 the petitioner filed an application to confirm the grant. JNW (J) , the protestor, the deceased's surviving widow filed an affidavit of protest dated November 7, 2017 opposing the confirmation of grant. On the 9<sup>th</sup> August 2018 vide a consent of both parties JNW and MNN were appointed joint administrators of the deceased's estate. The court ordered them to file a joint mode of administration and in the event they did not agree on the mode of administration each administrator was to file their proposed mode of distribution. The application by M was supported by her affidavit in support dated February 28, 2022 and a subsequent one dated September 23, 2022 proposing the mode of distribution. J filed her proposed mode of distribution dated the November 3, 2022.
  3. According to the petitioner the deceased left the following assets; land parcel numbers Bokoli/ Bokoli/,6XX,6XX, 6XX, 6XX and a full plot in Bokoli market. The petitioner's mode of distribution is premised on the minutes of the clan for the subdivision of the estate dated January 14, 2000.
  4. M's mode of distribution is as follows;
    - 1<sup>st</sup> House
      - a. TW ( widow- deceased).....Nil
      - b. JWW (son- deceased)
        - Left a widow CN and son JWW.
        - i. CN.....Bokoli/ Bokoli/6XX ..10 acres
        - ii. JWW .....Bokoli/Bokoli/6XX....3 acres
        - iii. CN.....Full plot Bokoli market
      - c. JNW (son deceased) share is given to MNN
        - i. MNN.....Bokoli/Bokoli/6XX...10 acres
        - ii. MNN.....Plot Bokoli/Bokoli/6XX (50ftx100ft)
      - d. SNW .....Bokoli/Bokoli/6XX (50ftx100ft)
      - e. AK( Forster son).....Bokoli/Bokoli/6XX.....1.5 acres
    - 2<sup>nd</sup> House
      - a. JNW (widow).....Bokoli/Bokoli/6XX.....1.5 acres
      - b. SWW (son).....Bokoli/Bokoli 6XX.....5 ½ acres
      - c. MWW (son).....Bokoli/Bokoli /6XX.....5 acres
      - d. MSW (son).....Bokoli/Bokoli/6XX.....5 acres
      - e. EW (son).....Bokoli/Bokoli/6XX.....8 acres
      - f. JN (widow).....Developed plot Bokoli Market
      - g. EW (daughter).....Bokoli/Bokoli/6XX (50ftx100ft)



- h. CW (daughter).....Bokoli/Bokoli/6XX (50ftx100ft).
5. M in her written submission filed by her counsel on the December 8, 2022 submits as follows; that the mode of distribution is premised on the minutes of the clan for subdivision. That the respondent has sols parcel no Bokoli/Bokoli/6XX. That the said land comprises 18.5 acres and that the mode of share as proposed by the respondent exceeds the acreage of the said land. That is EW share is 9.81 acres and CN share is 9.13 acres then the acreage will total 18.94 cares which is an excess as per the official search. On Bokoli/Bokoli/6XX there is no dispute on the mode of sharing. On Bokoli/Bokoli/6XX, the applicant submits that the land measures 6.5acres as per the official search and the parties are in agreement on the beneficiaries to inherit the said land. On Bokoli/Bokoli/6XX there is no dispute on the proposed mode of distribution. On the market plots it was submitted that plot no. 23 is in the names of MKW & JNW and are not the subject of distribution. Plot no. 20 is for CNW.
6. J's mode of distribution is as follows;
- 1<sup>st</sup> House
- a. Bokoli/Bokoli/6XX..... MNN w/o JNW -10 acres
  - b. Bokoli/Bokoli/6XX ... CNW- 9.13acres
  - c. Bokoli/Bokoli/6XX
    - i. CN -1.5acres
    - ii. JWW -1.5 acres
    - iii. AK -3.7 acres
  - d. An undeveloped plot in Bokoli market- To CNW
  - e. A developed plot in Bokoli market - To MNN
  - f. One ploughed (sungura) - To the house of TW
- 2<sup>nd</sup> House
- a. Bokoli/ Bokoli/6XX – To EWW -9.81 acres
  - b. Bokoli/Bokoli/6XX- To JNW- 1.5 acres
  - c. Bokoli/Bokoli/6XX
    - i. SWW - 5 acres
    - ii. EW s/o MWW – 5 acres
    - iii. MSW - 5 acres
  - d. Developed plot in Bokoli market – To JNW
  - e. One ploughed (sungura)
7. The protestor submissions were filed on the Dcember 8, 2022. The protestor submits that deceased's assets are as follows; Bokoli/Bokoli/6XX is approximately 15 acres, 6XX is approximately 6 acres, 6XX is approximately 18.91 acres and 6XX is about 10 acres. 3 developed plots in Bokoli market, one undeveloped plot in Bokoli market and 2 ploughs. It was submitted that the clan/ wider family had on the July 25, 2000 shared the estate among the beneficiaries and have since occupied the portions



allocated to them. The beneficiaries signed the minutes of July 25, 2000 signifying their acceptance of the allocations made to them. Reliance was made on Kakamega HC Succession Cause No 833 of 2006. It was submitted that the court directs the petitioner to avail search certificates for the four (4) parcels in question in order to ascertain the correct acreage of each parcel.

### Determination

8. I have analyzed the parties mode of distribution and their submissions. The affidavit in support of the petition for letters of administration intestate indicates the assets as LR Bokoli/Bokoli 6XX, 6XX, 6XX and 6XX. Attached to the affidavit are certificates of official search as follows; For Bokoli/Bokoli/6XX approximately 15.5 acres, parcel no. 6XX is about 6.5 acres, parcel no. 6XX is about 18.5 acres and parcel no. 6XX is about 10 acres. The parties agree that the said land parcels were the ones which belong to the deceased. In addition, there are some plots in Bokoli market. Going by these official searches I will now consider the proposed mode of distribution.
9. The law as regards the distribution of a polygamous intestate deceased person is provided in Section 40 of the [Law of Succession Act](#) Cap 160 as follows;
  40. Where intestate was polygamous
    - (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.
10. I have considered the proposals by the 2 administrators on the mode of distribution , noting the acreage of the parcels of land as indicated in the official searches. J has indicated that her proposed mode of distribution is in line with the clan/family meeting they had on the 25/7/2000. M has made no comment on the said meeting and minutes.
11. The 2 administrators are in agreement in the mode of distribution of the LR Bokoli/Bokoli 6XX and 6XX. They have different proposals for parcels numbers 6XX and 6XX. According to M parcel land no. 6XX is 6.5 acres and should be inherited by JW- 3acres and AK-1.5 acres. The submissions indicate that J sold 2 acres from this parcel of land to 2 different persons. This is evidence being adduced by way of submissions which is improper and not admissible. The concerned administrator should have adduced this evidence by way of an affidavit. J proposes that the said parcel be shared as follows; CW 1.5 acres, JW 1.5 acres and AK 3.5 acres. This is in line with what the family discussed in their meeting held on the July 25, 2000 as per min3/7/2000. The certificate of search shows the said parcel of land is 6.5 acres. I am persuaded by the mode of distribution presented by J on parcel no. 6XX as its in line with the clan/ family meeting and is reasonable .
12. Next is land parcel no 6XX. As per the certificate of search this land is 18.5 acres. M's proposal is that C gets 10 acres, EW 8 acres and the 50ftx100ft plots be inherited by MN, SN, EW and CW. J on the other proposes that C gets 9.13 acres, EWW 9.81acres, this totals 18.94. M's proposal is less than 0.5 and J's proposal is more by 0.44. C and E shall inherit their parcels in land parcel no. 6XX, a survey to be done by the administrators to find out the exact acreage each beneficiary is occupying.



13. The parties are in agreement that there are plots at Bokoli market. It is not clear whether they part of parcel no. 6XX. The family agreement indicates that the J was to get the plot with the Butchery, the developed plot was to go to JW, M's husband and the undeveloped plot to JW (CN). There is mention of One ploughed(Sungura) which is for the house of TW. This later plot is not in the list of assets of the deceased. My view is one plot will be inherited by the 1<sup>st</sup> house and the 2 other plots by the 2<sup>nd</sup> house.
14. In conclusion I order distribution of the deceased's assets as follows;
- a. LR Bokoli/Bokoli/6XX
    - i. SWW 5 ½ acres
    - ii. MWW 5 acres
    - iii. MSW 5 acres.
  - b. LR Bokoli/Bokoli /6XX
    - i. CNW 1.5 acres
    - ii. JWW 1.5 acres
    - iii. AK 3.7 acres
  - c. LR Bokoli/ Bokoli/6XX
    - i. CNW
    - ii. EWW
    - iii. A survey to be done by the administrators to establish the exact acreage each beneficiary.
  - d. LR Bokoli/Bokoli /6XX
    - i. MNN w/o JNW 10 acres
  - e. Plots at Bokoli Market
    - a. 1<sup>st</sup> house one plot
    - b. 2<sup>nd</sup> house two plots.
15. The grant dated November 8, 2022 is therefore confirmed and a certificate to issue. Each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS DAY 19<sup>TH</sup> OF APRIL 2023.**

**R. E.OUGO**

**JUDGE**

**In the presence of:**

**Mr. Shikhu for the Petitioner**

**Mr. Kiarie for the Protestor**

**Wilkister - C/A**

