



REPUBLIC OF KENYA



**In re Estate of Jacob Wambia Walekhwa (Deceased) (Succession Cause  
850 of 2007) [2023] KEHC 20616 (KLR) (21 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20616 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 850 OF 2007  
WM MUSYOKA, J  
JULY 21, 2023**

**RULING**

1. I am tasked with determining a summons for confirmation of grant, dated June 15, 2021. In the affidavit in support of the application, the 2 administrators are disclosed, and thereafter distribution is proposed between 3 individuals. It is not indicated how these 3 are related to the deceased.
2. There is a protest filed to that application. It proposes that the estate be distributed between the 3 houses of the deceased, without disclosing how the 3 houses were composed.
3. The applicants and the protestor, or their legal advisers, are, no doubt, not serious. Distribution in intestacy is to individuals who are related to the deceased in one way or the other. Those individuals must be named in the application, and how they relate to the deceased disclosed. Where the deceased was a polygamist, the individuals who make up the houses should be grouped according to the houses, and how they were related to the deceased disclosed.
4. The application, dated June 15, 2021, and the protest to it, dated October 21, 2021, are inadequate, to assist the court make a decision on distribution, for they make no disclosure of the children and other survivors of the deceased, as required by the proviso to section 71(2) of the *Law of Succession Act* and rule 40(4)(6)(8) of the *Probate and Administration Rules*. The application cannot even be cured by the filing of further affidavits.
5. I have no option, but to strike it out. Let the administrators file a proper summons for confirmation of grant, where they disclose each and every child of the deceased in each house, and disclose any dead children, giving details of any child or children who survive them. I shall allocate a date for compliance.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 21<sup>ST</sup> DAY  
OF JULY 2023**

**WM MUSYOKA**

**JUDGE**

