



In re Estate of Zebedeus Willbrodeus Obinchu (Deceased) (Probate & Administration 2 of 2016) [2024] KEHC 15539 (KLR) (5 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15539 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
PROBATE & ADMINISTRATION 2 OF 2016
WA OKWANY, J
DECEMBER 5, 2024
IN THE MATTER OF THE ESTATE OF ZEBEDEUS
WILLBRODEUS OBINCHU ----- (DECEASED)**

BETWEEN

JACKLINE BONARERI OBINCHU 1ST PETITIONER

FENANDES SURE OBINCHU 2ND PETITIONER

AND

PENINA KERUBO KERAMA PROTESTOR

RULING

1. Zebedeus Willbrodeus Obinchu (deceased) died intestate leaving behind 8 children (2 sons and 6 daughters).
2. The deceased's estate is comprised of Land parcel numbers Kitutu Settlement Scheme/12 and Wanjare/Bogitaa/1509 (hereinafter the first and second parcel respectively). Grant of Letters of Administration intestate in respect to the deceased's estate was issued to the Petitioners herein on 3rd May 2022. The Petitioners thereafter filed an application for confirmation of grant wherein they proposed to distribute the first parcel equally amongst the eight dependants while the whole of the second parcel was given to the 2nd Petitioner/Administrator, Mr. Fernandes Obinchu.
3. The Protestor herein however filed an Affidavit of Protest dated 27th October 2023 wherein she opposes the proposal to give the second parcel to the 2nd Petitioner on the basis that she is the deceased's daughter-in-law having been married to one George Abaya Obinchu (deceased). She avers that her late husband had constructed a residential house on the said land parcel No. Wanjare/Bogitaa/1509 and that the said parcel ought to be distributed to her and the 2nd Petitioner.



4. The Petitioners filed an Affidavit in response to the Affidavit of Protest wherein they aver that all the beneficiaries agreed to the proposed mode of distribution and that the Protest was misguided since all the beneficiaries are entitled to an equal share of the estate.
5. The protest was canvassed by way of written submissions which I have considered.
6. The Protestor's case was that she was entitled to an equal share of land parcel No. Wanjare/Bogitaa/1509 because her deceased husband had constructed a permanent house on the said land and that a portion of the said land was given to her husband by their deceased father during his lifetime. It was submitted that the said property ought to be subdivided in favour of the two sons in accordance with Section 42 of the Law of Succession Act as a constructive trust had been created and that the doctrine of proprietary estoppel therefore applied in favour of the Protestor's late husband.
7. The Petitioners, on their part, argued that the beneficiaries had agreed that the parcel in contention be given to the 2nd Petitioner. They submitted that the Protestor did not tender any evidence to show that the deceased had bequeathed the suit land to her late husband through a gift or that her deceased husband had built a permanent house thereon.
8. I have considered the pleadings filed herein and the parties respective submissions. I find that the main issue for determination is whether the said Protest is merited.
9. Section 38 of the Law of Succession Act provides as follows: -
 38. Where an intestate has left a surviving child or children but no spouse, the net interstate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children.
10. The above provision is clear on the issue of equal distribution of the estate of a deceased person to all the surviving children irrespective of their gender. The Petitioners have alleged that the deceased's children had agreed to equal distribution of land parcel No. Kitutu Settlement Scheme/12. It is however not clear if there was any agreement on the distribution of land parcel No. Wanjare/Bogitaa/1509. The Protestor contended that the said parcel was to be distributed between the two sons of the deceased and that she was entitled to a share thereof in her capacity as the wife of one of the sons who is also deceased.
11. A perusal of the pleadings reveals that the Petitioners did not file a consent to the proposed mode of distribution so as to support their claim that all the children of the deceased had agreed to their proposal.
12. The Petitioners indicated that their attempts to reach out to the Protestor with a view to reaching a consensus were unsuccessful. It is trite that where parties to a succession matter fail to agree on the mode of distribution of the Estate, they automatically submit themselves to the jurisdiction of a succession court which then subjects the distribution of the Estate to the provisions of the Law of Succession Act and any other attendant laws.
13. For the above reasons, I direct that the parties herein (the beneficiaries) to agree on the mode of distribution by filing a duly signed consent to the mode of distribution for this court's consideration. In the event that parties are unable to agree on the mode of distribution, the court makes the following further directions: -
 - i. That the beneficiaries are directed to resolve the issue of distribution of the Land Parcel No. Wanjare/Bogitaa/1509 through Mediation.



- ii. The Mediation Agreement should be filed before this Court within 45 days from the date of this ruling.
- iii. The Court shall render its final orders on the distribution of the Estate of the deceased upon the filing of the Mediation Agreement.
- iv. Mention on 5th February 2025.

14. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS
5TH DAY OF DECEMBER 2024.**

W. A. OKWANY

JUDGE

