



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**SUCCESSION CAUSE NO. 3B OF 2019**

**IN THE MATTER OF THE ESTATE OF NELSON OWITI AUDI.....DECEASED**

**AND**

**IN THE MATTER OF THOMAS ODHIAMBO OWITI.....1<sup>ST</sup> PETITIONER**

**BERTHA ANYANGO OWITI.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**ANTONY ABONYO OWITI .....1<sup>ST</sup> OBJECTOR**

**THEDEUS ONDIJO OWITI.....2<sup>ND</sup> OBJECTOR**

**RULING**

1. On 6/10/2020, and by consent of the Petitioner and Objectors' counsel on record, a grant of letters of administration intestate in respect of the estate of the deceased Nelson Owiti Audi was issued jointly to:

- 1) *Thomas Anyango Owiti - son*
- 2) *Bertha Anyango Owiti - daughter*
- 3) *Phelistus Ondijo Owiti - widow*
- 4) *Thedeus Ondijo Owiti - son*

To jointly administer the Estate of the deceased **Nelson Owiti Audi**.

2. This was following the Gazettement of the Petition filed in court on 15/10/2019 vide Gazette Notice No. 3988 of 12/6/2020.

3. The court then directed the co-administrators to administer the estate of the deceased in accordance with the law and to ensure they identify and list all beneficiaries and assets of the deceased for purposes of distribution among all the eligible beneficiaries and apply for confirmation of the grant before elapse of six months.

4. Accordingly, all the objection proceedings lodged on 24/2/2020 to the making of the grant by Antony Abonyo Owiti and Thedeus Ondijo Owiti were marked as spent.

5. In compliance with the above directions and consent order, on 2/12/2020, vide Summons for Confirmation of grant, an application was made by the initial petitioners annexing a schedule of proposed mode of distribution of the estate of the deceased Nelson Owiti Audi but which proposed schedule was not signed by three of the beneficiaries namely; Phelistus Ondijo Owiti, Thedeus Ondijo owiti and Antony Abonyo Owiti.

6. Instead, the above named three beneficiaries, two of whom this court, by consent of the parties of 6/10/2020 had appointed as co administrators namely, Phelistus Ondijo Owiti and Thedeus Ondijo Owiti, filed a protest dated 10/12/2020 contending that they had not signed the consent of the proposed mode of distribution of the Estate of the deceased Nelson Owiti Audi because some of the properties listed under the schedule were *gifts intervivos* and hence are not available for distribution namely: House in Kibera Nairobi Block 61/381 and Owen's Nursing Home.

7. The protesters also contended that as beneficiaries from the 2<sup>nd</sup> household of the deceased, they proposed an alternative mode of distribution as follows:

- a) Land - Nyagoko/1532 to be equally divided between the 1<sup>st</sup> and 2<sup>nd</sup> family.*
- b) Land -Nyagoko/2145 to be divided equally between the 2 households.*
- c) Nyamonye East Yimbo/267 - to be divided equally between the 2 households and revocation of fraudulent subdivision of the same.*
- d) Nairobi West Plot No. 37/437 to be sold and proceeds be divided equally between the 2 households.*
- e) Kisumu/Manyatta/A/16 to be sold and the proceeds be equally shared between the 2 households.*
- f) Undetermined amount of money in KCB Account No. [110xxxxxxx]*
- g) Shares in Kenya Airways Account No. 4788 to be shared equally between the 2 households.*
- h) Shares in Safaricom A/C xxxxxxx to be shared equally between the 2 households.*
- i) Shares in National Bank Account No. 00xxxxx to be shared equally between the 2 households.*
- j) Motor Vehicle Registration No. 504 KNF 189 Peugeot to be given to the surviving widow Phelistus Ondijo Owiti.*

8. Owing to the protest to the Summons for Confirmation of grant, it became necessary for the court to hear the protest.

9. On 1/3/2021, the matter came up for directions. However, with the court's intervention by appealing to the parties to attempt a negotiated settlement, the parties requested for time to discuss the matter and when they resumed court at noon the same day, they agreed through their respective advocates Mr. Ojienda for the 1<sup>st</sup> household and Mr. G. Okello for the Protesters from the 2<sup>nd</sup> household as follows:

- 1) The house in Nairobi West/No. 37/437 be given to the first household.*
- 2) Plot No. West Asembo/Nyagoko/1532 be equally distributed between the 2 households.*
- 3) Plot No. West Asembo/Nyagoko/2145 be equally distributed between the 2 households,*
- 4) Shares in Kenya Airways, to be shared equally between the 2 households.*
- 5) Shares in Safaricom, to be shared equally between the 2 households.*
- 6) Shares in National Bank, to be shared equally between the 2 households.*
- 7) Money in KCB Bank to be shared equally between the 2 households.*
- 8) Plot in Kisumu/Manyatta/16 be given to the second household.*
- 9) Motor Vehicle Peugeot 504 KNF 189 to be given to Antony Abonyo Owiti.*
- 10) Plot No. Nyamonye/East Yimbo/267, which is demarcated to be shared between the two households as per the existing boundaries/demarcation. Note that the surviving widow Phelistus Ondijo Owiti shall nonetheless hold a life interest in the portion comprising her matrimonial home.*

10. Therefore, the parties having so agreed to share the estate of the deceased Nelson Owiti Audi as stated above, I hereby confirm the grant of letters of Administration intestate issued to the 4 Petitioners/administrators herein on 6/10/2020 namely:

- 1) Thomas Odhiambo Owiti*
- 2) Bertha Anyango Owiti*
- 3) Phelistus Ondijo Owiti*
- 4) Thadeus Ondijo Owiti*

11. I further direct that the first two Petitioners/administrators Thomas Odhiambo Owiti and Bertha Anyango Owiti shall hold the property shared/distributed to the first household in trust for all the identified eligible bonafide beneficiaries in the first household whereas the

administrators Phelistus Ondijo Owiti and Thedeus Ondijo Owiti from the 2<sup>nd</sup> household shall hold the shared/distributed property in trust for all identified eligible bonafide beneficiaries in the second household.

12. All the co-administrators to administer and distribute the Estate of the deceased Nelson Owiti Audi in accordance with this Ruling and the consent and in accordance with the Law of Succession Act Cap 160 Laws of Kenya.

13. Certificate of confirmation of grant to issue forthwith.

14. Orders accordingly.

**Dated, signed and delivered at Siaya this 9<sup>th</sup> day of March, 2021**

**R.E. ABURILI**

**JUDGE**