



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 82 OF 2006**

**IN THE MATTER OF THE ESTATE OF DISHON AMISI KEMOLI (DECEASED)**

**JUDGMENT**

1. What is for determination is the summons for confirmation of grant, dated 18<sup>th</sup> August 2017, filed at the instance of Peter Kemoli Amisi. He is the administrator of the estate, by virtue of letters of administration intestate made to him, and Damaris Mudeli Mage, on 31<sup>st</sup> August 2016. I shall refer to him, henceforth, as the applicant. He proposes distribution of the estate, North Maragoli/Kisatiru/92, to himself absolutely.

2. There is a reply to the application, by Tamar Mage, vide an affidavit of protest, sworn on 27<sup>th</sup> November 2018. I shall refer to her hereafter as the protestor. She avers that she and the applicant are children of the deceased, albeit from different mothers. According to her, the deceased had married twice, and had two wives, being Tamar Mage and Jenifer Mwangoh. The first house of Tamar Mage had four daughters; while the second house of Jenifer Mwangoh had four daughters and a son. The son is the applicant. She avers that the deceased had subdivided the property, North Maragoli/Kisatiru/92, before he died, between the two houses, and a boundary had been fixed. She proposes that the property be shared equally between the two houses.

3. The matter was heard orally. The case for the protestor was presented first. It came out, from those who testified, that the deceased had married twice, and had children with his two wives, being 4 and 5, respectively. It was said that the deceased had distributed his property, before he died, between the two houses, and the protestor wanted the estate shared out in that fashion. It emerged that the daughters in the 1<sup>st</sup> house were married, but were asserting their right in law to a share in their father's estate. The applicant presented his case next. He asserted that he was the one entitled to the land. He said that there were no boundaries on the land.

4. This matter is in the estate of Dishon Amisi Kemoli, who died on 8<sup>th</sup> May 1989. I believe the principal matter for determination is how the estate is to be distributed, for no issues have been raised about how the grant was obtained, whether the estate was administered in accordance with the law, and whether the administrators ought to be confirmed to complete administration. The protestor did talk about the appointment of an Evans as a co-administrator, but that was not deposed to in the affidavit of protest.

5. The deceased died in 1989, after the Law of Succession Act, Cap 160, Laws of Kenya, had come into force in 1981. His intestate estate, therefore, fell for distribution in accordance with Part V of the Law of Succession Act. He died a polygamist, and, therefore, his estate should be distributed in accordance with section 40 of the Act, according to the two houses, taking into account the number widows and children in each house. The 1<sup>st</sup> house comprises of 4 daughters, and, therefore, it has 4 units. The 2<sup>nd</sup> house comprises of 1 widow, 4 daughters and 1 son, therefore, it comprises of 6 units. The asset shall be divided in the ratio of 4:6, which can be reduced to 2:3, so that the 1<sup>st</sup> house takes 2 units while the 2<sup>nd</sup> house takes 3 units. The Law of Succession Act is gender neutral, and female children have equal right with male children to the estate of their dead father.

6. In the end, I dispose of the confirmation application in the following terms:

**(a) That I hereby confirm the administrators to complete administration of the estate herein;**

**(b) That the estate asset, North Maragoli/Kisatiru/92, to be shared at the ratio of 2:3 as between the 1<sup>st</sup> and 2<sup>nd</sup> houses;**

**(c) That thereafter the property accruing to each house shall be shared equally between the members of each house, as identified in the affidavit of protest sworn on 27<sup>th</sup> November 2018, by Tamar Mage;**

**(d) That a certificate of confirmation of grant shall issue in those terms;**

**(e) That each party shall bear their own costs;**

**(f) That this being a matter from Vihiga, the file shall hereafter be transferred to the High Court of Kenya at Vihiga for finalization, and**

**(g) That any party aggrieved shall have twenty-eight (28) days leave to move the Court of Appeal, appropriately, on appeal.**

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 18<sup>th</sup> DAY OF June 2021**

**W. MUSYOKA**

JUDGE