



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 31 OF 2011**

**IN THE MATTER OF THE ESTATE OF JOSEPH SAYA**

**WAMONDO alias JOSEPH WAMONDO SAYIA (DECEASED)**

**RULING**

1. The application for determination is the summons for confirmation of grant, dated 25<sup>th</sup> January 2016. It proposes distribution of the estate amongst surviving widows, sons, daughters-in-law and “liabilities” of the estate. The proposal is that the estate devolve wholly upon the two administrators. There are consents on record, in Form 37, duly executed by the survivors and the “liabilities.”

2. When the Application was placed before the court, on 3<sup>rd</sup> October 2016, it took the view that the same had no distributed the estate amongst the beneficiaries, and directed the administrators to file a supplementary affidavit, to allocate shares to each of the beneficiaries. There has been compliance. There is a supplementary affidavit on record, sworn by Rosa Makokha Wamondo. The same has allocated shares amongst the disclosed survivors and the “liabilities.”

3. There is one shortcoming though, the said allocation or distribution is not supported by a consent in Form 37, duly executed by all the beneficiaries listed in that affidavit, as required by Rule 40(8) of the Probate and Administration Rules. It is lapses that these that allow beneficiaries to come back to court claiming that they were unaware of the proceedings, forcing the court undertake the exercise of distributing the estate afresh, especially since the named individuals were not presented in court to confirm whether or not they agreed with the distribution proposed. A consent on distribution, in Form 37, ought to be filed, duly executed by all the individuals listed in the form.

4. The other shortcoming is that the deceased died on 6<sup>th</sup> December 1983, after the Law of Succession Act had come into force. The intestate estate of the deceased should be distributed strictly in accordance with Part V of the Act. The Law of Succession Act is gender neutral, and both male and female children of the deceased are entitled equally to the estate of their father. The administrators have only disclosed the sons of the deceased. They have remained silent on whether the deceased had daughters or not. I can see from the record that the deceased had up to three wives. It would be highly unlikely that out of those three wives, the deceased did not father a daughter. The proviso to section 71(2) of the Law of Succession Act and Rule 40(4) of the Probate and Administration Rules, require that the court be satisfied that all the persons beneficially entitled to a share in the estate have been ascertained, and so have their shares. I am not satisfied that that has been done. Let the administrators disclose whether the deceased had any daughters, name them and allocate to them their due shares. If any of the said daughters, do not wish to take up their share, let them execute deeds or swear affidavits renouncing or waiving their interest in the estate.

5. I shall only determine the pending summons for confirmation of grant, dated 25<sup>th</sup> January 2016, once the administrators comply with what I have set out in paragraphs 3 and 4 above. Let the Form 37 and affidavits, if any, be lodged herein in the next forty-five (45) days. It is so ordered.

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

**W. MUSYOKA**

**JUDGE**