



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO.12 of 2018

IN THE MATTER OF THE ESTATE OF THE LATE JOTHAM ANGUZA AMISI (DECEASED)

(1) REDEMPTA MARY KADENGE AMISI

(2) FREDERICK AYIGO AMISI

(3) MICHAEL IMBUSI AMISI

(4) STANISLAUS ANDREW AMISIADMINISTRATORS

RULING

1. The Court has before it an Application for confirmation of the grant of Letters of Administration issued to the above named Administrators on 14th November 2018. The Summons is “brought under Rule 71(3) of the Law of Succession Act Cap 160 and all enabling provisions of the law” and was filed on 6th November 2019.

2. The Summons does not list the Beneficiaries to the Estate nor the property comprised in the Estate. The Supporting Affidavit is a combined Affidavit of the 4 administrators. It sets out that the Deceased passed away on 12th July 2017 and that the Letters of Administration were issued to on 14th November 2018. The property (real and personal) comprised in the Estate is not listed, nor are the beneficiaries. However, the Deponents of the Affidavit, have exhibited as FRSM -1 a Schedule of Distribution which shows an intention to share the Estate amongst the Administrators only.

3. Attached to the Summons is a “Consent to the Mode of Distribution containing a list of 5 names with four corresponding signatures and a thumbprint. The Petition filed on 21st June 2018 has attached a death certificate that describes the Deceased as a “Retired Civil Servant” who was resident in Karen, Nairobi. It lists 12 potential beneficiaries, namely:

(a) Redempta Mary Kadenge Amisi (Widow)

(b) Margaret Luhunga Amisi

(c) Kennedy Munyoni Amisi (Deceased)

(d) Jane Chepngeny Amisi

(e) Hellen Luhanga Amisi

(f) Frederick Ayigo Amisi

(g) Michael Imbusi Amisi

(h) Stanislaus Andrew Amisi

(i) Brenda Kavaya Amisi

(j) Clarke Christine Amisi

(k) Lyndah Gondosio Amisi

(l) Damaris Angano Amisi

4. The Petition Lists the Estate as comprising:

(a) Tiriki/Gisambai/399

(b) Tiriki/Gisambai/396

(c) Tiriki/Gisambai/397

(d) Tiriki/Gisambai/1481

(e) Tiriki/Gisambai/659

(f) Tiriki/Gisambai/021

(g) L/R 3589/55

(h) SAME 500 Tractor

In view of the Deceased's profession, the Court would have expected him to have personal assets, in particular bank accounts, a pension, perhaps life insurance. The Petition and the Summons for Confirmation are silent on these matters. In addition, the Title Deed of the Property title number Titiki/Gisambai/1481 lists an encumbrance namely a Charge to Vihiga Trade Development Joint Loan Board for KShs.70,000/=. That is not explained.

5. Notwithstanding the above list, the "Schedule of Distribution Table", Lists a property L.R. No 3589/55 to be shared between "The four heirs/beneficiaries...." There is no explanation as to why the other Beneficiaries/Dependants cease to be heirs. Similarly, there is no explanation given as to whether the son called Kennedy Munyimi Amisi predeceased his father and/or whether he has any surviving heirs.

6. The Administrators have exhibited Affidavits from Christine Amisi Clark, Hellen Luhunga Amisi, Brenda Amisi-Hutchinson and Michael Imbusi Amisi. In those Affidavits, the deponents signify their consent to the distribution. That raises a question of whether their consent is an informed consent. In particular, the members of the family who are being disinherited by the Administrators have not signified that they understand that they have a right to inherit but are willingly giving up their entitlement. Of particular concern in that regard is the statement of Brenda Amisi-Hutchinson "THAT I am advised by counsel on the record that I am required to be present in court...." What other advise was given.

7. In the absence of an independent statement of each of the beneficiaries that they understand their entitlement but are willing to forego their shares to the Administrators, this Court is unable to confirm the grant. As a consequence the Summons are dismissed.

Order accordingly,

FARAH S. AMIN

JUDGE

Signed and Dated and Delivered at the High Court in Kakamega on this the 17th day of June 2021

In the Presence of:

Mr Mugalo for the Applicants

Court Assistant:

Judgment delivered electronically through the MS Teams Platform