



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

SUCCESSION CAUSE NO.443 OF 2013

EPERO ARAPAI ICHOMOT.....DECEASED

VERSUS

HENRY ODHIAMBO EPERO

PASCAL WENNEX EPERO.....PETITIONERS

AND

CHARLES MANYURU EPERO.....PROTESTOR

R U L I N G

[1] The subject grant of letters of administration intestate was issued to Henry Epero Odhiambo and Pascal Wennix Epero (**petitioners**) on the 7th May 2014. They later sought to confirm the grant by taking out the necessary summons for confirmation of grant dated 10th February 2015. However, on the 11th September 2015, Charles Manyuru Epero (**applicant/objector**) filed an affidavit in protest to confirmation of the grant on the basis of the proposed mode of distribution.

[2] The protest comes with an alternative proposal on the mode of distribution thereby implying that the parties and the actual beneficiaries of the estate are yet to agree on the agreeable mode of distribution. In the circumstances, therefore, the summons for confirmation of grant was prematurely taken out by the petitioners. This means that the grant is not ripe for confirmation even if belatedly.

Be that as it may, the petitioner's application for grant of letters of administration dated 25th November 2003, indicate that the deceased Epero Onapai Ichomoto was survived by a large number of beneficiaries whose relationship with him is not indicated. However, the chiefs letter dated 19th October 2012 showed that the deceased left behind three wives and several adult children. Those were the beneficiaries but the chiefs letter went further to include brothers and sisters of the deceased and their children as beneficiaries of his estate along with several people who had allegedly purchased part of the estate property which was a parcel of land described as South Teso/Chakol/785.

[3] In the summons for confirmation of grant, the petitioners proposed mode of distribution is completely inconsistent with the provisions of s.40 (1) of the **Law of Succession Act** which provides that:-

“Where an intestate has married more than once under any system of Law permitting polygamy, his personal and household effects and the residue of the net intestate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”

[4] The deceased was a polygamist and this being an intestate succession the aforementioned provision of the Law had to be followed in any proposal for distribution of the estate. Apparently, this was not the case with the proposal made by the petitioner nor with that of the applicant/objector.

Both proposals are also not proportionate and clearly discriminative against the widows of the deceased and their daughters. Both proposals are, as it were, a men's affair. Further to the foregoing, the two proposals appear to include persons who are not actual and true beneficiaries of the deceased.

[5] The deceased's brothers and sister could not take precedence over his widows and children in the administration and distribution of his estate. The alleged purchasers of part of the estate could not be regarded as beneficiaries, if they did not purchase the land from the deceased and if any part thereof was sold to them prior to confirmation of this grant, then the purported sale was null and void. The only remedy was a civil suit against the purported vendors.

[6] In the course of the proceedings it has emerged that the first petitioner, Henry Odhiambo Egero is since deceased. In the circumstances, it would be prudent for all the beneficiaries to agree on a suitable substitute and make the necessary application if they deem it necessary. Under s.81 of the **Law of Succession Act**, upon the death of one of the administrators, all the powers and duties of the administrators become vested in the surviving administrator. Otherwise, it is this court's opinion that in the prevailing circumstances of the case the grant cannot be confirmed as applied by the petitioners, neither can it be confirmed as proposed by the applicant.

[7] Accordingly, it is hereby directed that the parties do reconsider the matter and come up with an agreed mode of distribution before taking out any fresh summons for confirmation of grant and in any event within the next four (4) months from this date hereof. In default, the matter be referred forthwith to the office of the public trustee for necessary distribution of the estate in accordance with the Law.

Matter be mentioned on 29/9/2021 on the way forward and/or further orders.

J.R. KARANJAH

J U D G E

[READ AND SIGNED THIS 16TH DAY OF JUNE 2021]