

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 123 OF 2015

IN THE MATTER OF THE ESTATE OF JOHN WAMBATI OYWELI (DECEASED)

RULING

1. On 12th October 2017, the court ordered equal distribution of the estate herein, comprised in North Wanga/Indangalasia/114, amongst the six children of the deceased, that is to say Joseph Wambati Oyweri, Kanuti Oyweri Wambati, Kilonda Wambati, Anna Auma Wambati, Marita Adhiambo Wambati, Carolynne Wambati and Pricila Awoko Omonje.

2. It would appear that Joseph Wambati Oyweri and Kanuti Oyweri Wambati were unhappy with those orders. They have brought the application dated 12th October 2020, complaining that they were not involved in the process leading up to the confirmation of the grant. They would like the orders to be set aside. It is not clear what they object to for they were provided for in the confirmation. They talk of their sister and her daughter being left out, but they do not mention their names, and I would wonder why the sister and her daughter cannot themselves move the court.

3. There is a response, effectively saying that the said applicants were at all times represented in the matter by an advocate, and, therefore, they should not be heard to complain that they were sidelined.

4. The deceased was survived by children, but no spouse, which meant that section 38 of the Law of Succession Act, Cap 160, Laws of Kenya, applied. The estate was distributed equally amongst the surviving children of the deceased. That is the provision the court relied on, in its ruling of 8th October 2018, to order equal distribution of the estate, amongst the six children of the deceased. The court said section 38 was mandatory.

5. The applicants have not demonstrated, should I set aside the orders of 8th October 2018, and hear the confirmation application afresh, that I would apply a different law or different principles, and that the outcome of the repeat proceedings would differ from that of 8th October 2018. The court applied the law as it was on 8th October 2018. That law has not changed. If I were to distribute the estate afresh, I would still apply the same law, and the outcome would still be the same. The order of 8th October 2018 ought not to be set aside for the sake of pleasing the applicants, when it would, ultimately, serve no purpose at all.

6. There is no merit whatsoever in the application dated 12th October 2020, and I hereby dismiss the same with costs.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 17TH DAY OF SEPTEMBER, 2021

W MUSYOKA

JUDGE