



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 661 OF 2011

IN THE MATTER OF THE ESTATE OF WILFRED NYONGESA MAONGA (DECEASED)

JUDGMENT

1. These proceedings relate to the estate of Wilfred Nyongesa Maonga, who died on 10th November 2010. The letter on record, from the Chief of East Bunyala Location, where he hailed from, shows that the deceased had died a polygamist, having married twice. In his first house he was survived by two (2) sons, being Peter Maonga Nyongesa and Morton Wawire Nyongesa; and from his second house, by his widow, Alice Nanjala Nyongesa, and five sons, Benard Maonga Nyongesa, Rodgers Toola Nyongesa, Paul Aggrey Simiyu Nyongesa, Gerald Tony Nyongesa and Renson Sakwa Nyongesa.

2. A petition was lodged in the cause on 6th September 2011, by Alice Nanjala Nyongesa, in her capacity as widow of the deceased, seeking representation to the intestate estate of the deceased. She listed, in the petition, as the survivors of the deceased, the persons named in the Chief's letter referred to in paragraph 1 above. She expressed the deceased to have had died possessed of property described as Bunyala/Mundika/2113 and Bunyala/Namirama/478, 519 and 983. Barasa Wangia was listed as a 'liability.' The filing of the cause was publicized in the *Kenya Gazette* of 3rd February 2012. Letters of administration intestate were duly made to the petitioner on 6th March 2012, and a grant was subsequently issued, dated 26th March 2012. I shall hereafter refer to the petitioner, Alice Nanjala Nyongesa, as the administratrix.

3. Shortly after appointment, the administratrix obtained orders on 9th May 2012 to restrain one of the sons, Peter Maonga Nyongesa with respect to dealings on Bunyala/Namirama/478. On his part Peter Maonga Nyongesa initiated a summons dated 4th June 2012, for revocation of the grant made to the administratrix. The application dated 4th June 2012 was resolved by consent on 11th June 2012, on terms that Peter Maonga Nyongesa was appointed as a second administrator, and I shall hereafter refer to him as administrator. The administratrix was directed to file a summons for confirmation of grant, with the rider that the administrator was to file an affidavit of protest to that application, if he so pleased.

4. The administratrix filed the application for confirmation of grant on 29th June 2012, of even date. She confirmed that the deceased had died a polygamist having married two wives, being Jesca Amayale Nyongesa and Alice Nanjala Nyongesa. She expresses that the first wife was dead, but had had five children, being Peter Maonga Nyongesa, Morton Wawire Nyongesa, Esther Khalisia Nyongesa, Mary I. Nyongesa and Joyce Amati Nyongesa. The second wife was the administratrix herself. She survived the deceased together her children Beatrice Nekesa Nyongesa, Benard Maonga Nyongesa, Rodgers Toola Nyongesa, Aggrey Paul Simiyu Nyongesa, Tony Gerald Wawire Nyongesa, Benson Sakwa Nyongesa, Melvin Sisa Nyongesa and Carolyn Khakasa Nyongesa. He was said to have had another child outside wedlock, known as Hellen Makokha, who was said to be married. The deceased was said to have had died possessed of two assets - Bunyala/Namirama/478 and 983, measuring 17 and 18 acres, respectively. He was also said to have had owned Bunyala/Namirama/519, which he had sold to Barasa Wangia Nabiswa on 12th January 2005. He had also owned Bunyala/Mundika/2113, which he had sold to Sifuna Wechuli Doola on 2nd June 2008. She stated that Butso/Shikoti/1673 did not belong to the deceased, but to George Maleya Nyaligu.

5. She stated further that the deceased had not settled the first house on Bunyala/Namirama/478 and the second house on Bunyala/Namirama/983. She asserted that she and the deceased had jointly purchased Bunyala/Namirama/983 in the 1970s, at a time when she worked for the Kakamega County Council, while the late first wife was separated from the deceased. She stated that the deceased had shared out his property amongst his heirs in 2007, prior to his death, in the presence of elders. Out of Bunyala/Namirama/478 he gave five (5) acres to Peter Maonga Nyongesa, while Morton Wawire Nyongesa, Rodgers Toola Nyongesa and Aggrey Paul Simiyu Nyongesa were given four (4) acres each. Out of Bunyala/Namirama/983, Alice Nanjala Nyongesa and Benard Maonga Nyongesa got five (5) acres each, while Tony Gerald Wawire Nyongesa and Renson Sakwa Nyongesa got four (4) acres each. She stated further that those given Bunyala/Namirama/478 took possession. When the deceased sought to obtain consent to effect subdivision of the property in preparation to transfer it to the beneficiaries, the administrator objected and there were proceedings before the Navakholo Land Disputes Tribunal, which terminated with the Tribunal directing that the property be shared out as earlier done by the deceased. Thereafter, the beneficiaries of Bunyala/Namirama/478 continued to occupy and utilize it as distributed by the deceased.

6. The administrator swore an affidavit of protest on 18th October 2012, filed herein on 8th November 2012. He totally agreed with the

administratrix with respect to the composition of the family of the deceased, save that he did not list Hellen Makokha amongst the survivors. But he disagreed with her on the assets that made up the estate. According to him the deceased died possessed of Bunyala/Mundika/2113 and Bunyala/Namirama/478, 519 and 983. He stated further that the deceased had acquired other assets which he subsequently transferred to the administratrix, namely Butsotso/Shikoti/2363 and Bunyala/Namirama/1084. He also mentioned that he died possessed of two motor vehicles, registration marks and numbers KAT 452Y and KAU 163Z, which he transferred to the administratrix. He averred that Bunyala/Mundika/2113 was never sold as the deceased continued to collect rent from it till his death. He further averred that his half-brother, Tony Wawire Nyongesa, resided on Bunyala/Namirama/996, which he said the deceased had exchanged with Bukhayo/Mundika/2113 and Bunyala/Namirama/519. He stated that the exchange was with Barasa Wangia, who had bought the property from Benjamin Ujungu. He proposed distribution according to the houses, so that first house took Bunyala/Namirama/478 and 1084, Bukhayo/Mundika/2113 and KAT 452Y; while the second house took Bunyala/Namirama/983 and 996, Butsotso/Shikoti/2363 and KAU 163Z.

7. The protest elicited a response from the administratrix, through a further affidavit sworn on 18th March 2013. The principal issues raised in the further affidavit were that the administrator had left out one of the daughters of the deceased, Hellen Makokha; Bunyala/Namirama/519 and Bukhayo/Mundika/2113 had been sold and vacant possession given to the buyers, and that what remained was the transfer of the said wants; Butsotso/Shikoti/2363 and Bunyala/Namirama/1084 was property that she had herself purchased; that the two motors were bought by Rodgers Toola; and that Bunyala/Namirama/519 had never been exchanged with Bunyala/Namirama/996.

8. Directions were given on 5th December 2012 for the disposal of the said application by way of oral evidence.

9. The oral hearing commenced on 5th October 2016. The first on the stand was the protestor, who is also an administrator of the estate, Peter Maonga Nyongesa. He stated that one of the sons of the deceased from the first house had died. He stated his name to be Martin Wawire Nyongesa, whose wife was also said to be deceased. He was, however, survived by three children, among them, Josephat Wawire, who was said to be over eighteen (18). He testified that the first house lived on Bunyala/Namirama/478; while the second house lived on Bunyala/Namirama/983, where the deceased was also buried. He said that he was unaware that Bukhayo/Mundika/2113 had been sold; adding that the alleged buyer, Hassan Sifuna, was a brother of the administratrix. He said that Bunyala/Namirama/1084 was bought jointly by the administratrix and the deceased at a time when the deceased was separated from his mother, and was registered in the name of the deceased. He also stated that the two motor vehicles also belonged to the deceased.

10. During cross-examination, he stated that Bunyala/Namirama/519 belonged to the estate. He asserted that the deceased never sold Bunyala/Namirama/519 to Barasa Wangia, the person who was utilizing it, instead it had been exchanged with Bunyala/Namirama/996. He stated that the said property was not ancestral, and there was no relationship between the deceased and the said Barasa Wangia. He also stated that he was not aware that Bukhayo/Mundika/2113 had been sold. On Bunyala/Namirama/1084, he conceded that the same was registered in the name of the administratrix, and conceded further that the administratrix was working, while his own mother was a farmer. He conceded that a Land Disputes Tribunal case was initiated between him and the deceased over Bunyala/Namirama/478, as the administrator was unhappy with the way the deceased had distributed it, but in the end the Tribunal upheld the distribution by the deceased. He said that he appealed against that decision, but he did not have the court papers with him. He stated that Bunyala/Namirama/983 was bought at a time when the administratrix was in employment, although he asserted that it was bought by the deceased.

11. He was followed to the stand by Waswa FWH Namawa, who introduced himself as a cousin to the deceased. He stated that he knew that the deceased had four parcels of land, and one that was registered in the name of the administratrix.

12. The administratrix took to the witness stand on 16th November 2016. She stated that the deceased had married two wives and that she had listed their children in her application. She said that she had also listed the assets available for distribution, and documents to show the assets that the deceased had sold. She explained that the Tribunal proceedings arose from the administrator's refusal to take the property that the deceased had given him, and the Tribunal eventually agreed with the deceased. After that the land was surveyed, and beacons were placed on the ground, but the administrator removed them. He also chased away the other children who were to get a share out of the Bunyala/Namirama/478. She asserted that Bunyala/Namirama/983 was jointly bought by her and the deceased. She asserted further that Bunyala/Namirama/1084 and Butsotso/Shikoti/2363 was property that she bought with her own money.

13. Hassan Sifuna Doola took the witness stand next. He stated that he bought Bukhayo/Mundika/2113 from the deceased for Ks. 1, 600, 000.00, adding that he completed paying the full purchase price. He stated that he had a commercial building standing on the property. He conceded that the administratrix was his sister, meaning, therefore, that he bought the property from his brother-in-law. He stated that his nephew, Rodgers, collected rent from the premises. He stated that he bought the property in 2008, but the same had not been transferred to him. Barasa Wangia Nabiswa testified next. He stated that he bought Bunyala/Namirama/519 from the deceased, and paid for it in installments, until it was fully paid for. The transaction was in 2005. He stated that the property was still in the deceased's name. He denied exchanging any land with the deceased. Mary Shirako Uhuma was the last witness. She testified that she was the one who sold Bunyala/Namirama/1084 to administratrix. She confirmed the property was conveyed to her name.

14. At the close of the oral hearings, the parties were directed to file written submissions. Both sides have complied by filing their respective written submissions. I have read through them and noted the arguments made therein.

15. The application for determination is for confirmation of grant. It bears emphasis that confirmation of grant is the most critical stage in the life of a succession cause, for it sets in motion the process of distribution of the estate, which, in any event, is the reason for the filing of the succession cause in the first place. That explains why the succession cause comes to an end once the grant is confirmed. Distribution of the estate is at the core of the confirmation of the grant. It is important, therefore, that the confirmation process be handled with care, by affording everyone a chance to be heard, so that closure can be found for all the parties and for all the persons beneficially interested in the estate.

16. Confirmation of grants is provided for under section 71 of the Law of Succession Act, Cap 160, Laws of Kenya, and the provision says as follows:

“Confirmation of Grants

71. *Confirmation of grants*

(1) *After the expiration of a period of six months, or such shorter period as the court may direct under subsection (3), from the date of any grant of representation, the holder thereof shall apply to the court for confirmation of the grant in order to empower the distribution of any capital assets.*

(2) *Subject to subsection (2A), the court to which application is made, or to which any dispute in respect thereof is referred, may—*

(a) if it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or

(b) if it is not so satisfied, issue to some other person or persons, in accordance with the provisions of sections 56 to 66 of this Act, a confirmed grant of letters of administration in respect of the estate, or so much thereof as may be administered; or

(c) order the applicant to deliver or transfer to the holder of a confirmed grant from any other court all assets of the estate then in his hands or under his control; or

(d) postpone confirmation of the grant for such period or periods, pending issue of further citations or otherwise, as may seem necessary in all the circumstances of the case:

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.”

17. It is plain, from the language of section 71, that in a confirmation application, the court is called upon to confirm appointment of the administrators and the distribution of the estate.

18. On confirmation of administrators, I do note that no issue has been raised by any of the parties over. It is, this however, a matter that I should pay attention to while exercising the discretion granted to me under section 71. An administrator who has failed to discharge his duties as such does not merit confirmation, and under section 71, the court can revoke his grant and hand over administration of the estate to another administrator. No lapses in administration have come to my notice, nor have any been brought to my attention. I shall, accordingly, find that the administrators in office have fairly discharged their duties, and merit being confirmed.

19. The second aspect, that is distribution, is a bit more involving. The proviso to section 71(2) of the Law of Succession Act, gives the prescription that the court ought not to confirm the grant until it is satisfied as to the identities of the persons and shares of all the persons beneficially entitled. That prescription is reproduced in Rule 40(4) of the Probate and Administration Rules. The two provisions say as follows:

“71 (2) ... Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities and shares of all persons beneficially entitled; and when confirmed such grant shall specify all such persons and their respective shares.”

“40(4). Where the deceased has died wholly or partially intestate the applicant shall satisfy the court that the identification and shares of all persons beneficially entitled to the estate have been ascertained and determined.”

20. Three critical matters come out of those two provisions. At confirmation, the administrator is expected to place before the court a complete list of the persons that he has identified or ascertained as being beneficially entitled to a share in the estate. In cases of intestacy, such persons would be the survivors of the deceased, in terms of Part V of the Law of Succession Act, depending on whether the deceased was survived by a spouse or children or both; and where he is survived by none, in those categories, other relatives. That would also include dependants as defined in section 29 of Part III of the Law of Succession Act, so long as the court was moved under section 26 of the Act and made declarations that certain persons were dependants of the deceased. Often, at confirmation, persons who are creditors of the estate are treated as persons who are beneficially entitled to a share in the estate. That should not be, for distribution of an intestate estate should be of the net estate. It is envisaged that debts and liabilities are settled first before the estate is distributed. It presupposes that administrators ought to identify the debts and liabilities of the estate first, settle them and thereafter move to distribute the net estate after the payments of debts and liabilities. For that reason, therefore, creditors and purchasers of estate of property ought not to be entertained at this stage. They should be sorted out first before the administrators file the application for confirmation of grant. However, where they have not been settled, and an application for confirmation of grant is mounted, the administrators can quite properly provide for them, within the proposed distribution.

21. The second matter relates to the assets. The provisions talk of shares and not assets. Reference to shares should be read to mean shares in the estate being distributed. There is obligation on the part of the administrator to identify the assets that are the subject of the confirmation application. The administrator, by the confirmation application, would have come to court to have the court distribute the assets or property that make up the estate. The property to be distributed must be identified or ascertained. The third matter is about the shares of each of the persons beneficially entitled to the assets or property of the estate. The administrator is expected to propose distribution of the assets amongst the persons beneficially entitled, indicating the share of each one of them. That presupposes that all the persons entitled to a share should be allocated one, and where any one of them does not desire to take up their share, they ought to file documents renouncing their share or entitlement.

22. The question then is whether the administrators herein have identified the persons who are beneficially entitled to shares in the estate? On who the survivors of the deceased are, there appears to be consensus, that the deceased was a polygamist, having married two wives, one of whom had died as at the date the confirmation application was being filed. There is also consensus on the children of the two wives. These individuals have been listed in paragraphs 4 and 5 of this judgement, and I shall not list them in this paragraph. The administratrix has mentioned Hellen Makokha as being a child of the deceased, born outside wedlock. The administrator did not list her in his schedule of survivors, and when the administratrix raised the issue, he offered no explanation. I shall take it, therefore, that Hellen Makokha was a child of the deceased, and that she, or her survivors, in the event she is deceased, is entitled to a share in the estate of the deceased herein.

23. Were there any dependants? Dependency is subject to Part III of the Law of Succession Act. A dependant is that person who falls within the definition of dependant in section 29 of the Act, and who has been declared by the court to be a dependant following an application brought under section 26 of the Law of Succession Act. No order has been placed before me, made by the court in this cause or another, under section 26, to pronounce any person as a dependant of the deceased. Therefore, I shall take it that there are no persons beneficially entitled to the estate as dependants of the deceased. It would appear to me, though, that the word 'dependant' as used in the Law of Succession Act appears to differ in context from the use of that word in the Probate and Administration Rules.

24. Were there any creditors? Did the estate have debts and liabilities? None of the administrators addressed the matter of debts and liabilities in the context of the application for confirmation of grant. Neither of the two gave an indication as to whether they were able to ascertain any debts and liabilities of the estate, nor whether such debts and liabilities had been settled or provided for. The administratrix, in her application, did not identify any creditors and did not allocate them any shares in the estate. I note though from the petition that one Barasa Wangia Nabiswa is listed in the liability column, but he is not provided for in the distribution of the assets said to be available for distribution. He has not been allocated any shares, if he indeed was a person beneficially entitled to the estate. The administratrix mentioned in her application that the deceased had sold one of the assets to one Hassan Sifuna Wechuli Doola, yet the property that was allegedly sold to him, and which was still in the name of the deceased was not listed. He was not allotted any shares in the proposed distribution.

25. I note that the administrator vehemently contested the alleged sales of land to these two, Barasa Wangia Nabiswa and Hassan Sifuna Doola, for various reasons. To him there were valid no sales, and, therefore, these two individuals are not creditors of the estate, warranting being listed as persons beneficially entitled to a share in the estate. Were these individuals' *bona fide* purchasers of property from the deceased to warrant being treated as creditors who ought to be catered for from the estate? Documents have been placed on record, to demonstrate that there were agreements of sale and that money changed hands. However, I have no jurisdiction to make a finding, one way or the other, with regard to whether the alleged sales were valid and resulted in the two acquiring stakes in the estate. That is a matter which revolves around title to land. Under Articles 162(2) and 165(5) of the Constitution, I have no jurisdiction over that question. The parties are better off placing before it another forum for determination of the question. I shall not pronounce as to whether Barasa Wangia Nabiswa and Hassan Sifuna Doola were *bona fide* creditors of the estate, entitled to be allocated shares in the estate. They shall have to prove their entitlement to the property they claim they bought from the deceased by commencing suits against the estate at the appropriate forum.

26. On the second matter of the assets available for distribution, the two administrators are at variance. The administratrix identified only two assets as available for distribution, being Bunyala/Namirama/478 and 983. The administrator on his part stated that the assets available were Bunyala/Namirama/478, 983, 996 and 1084, Bukhayo/Mundika/2113, Butsotso/Shikoti/2363, KAT 452Y and KAU 163Z. The administratrix argued that Bukhayo/Mundika/2113 and Bunyala/Namirama/519 had been sold and vacant possession given to the buyers, and, therefore, the two did not form part of the estate. Butsotso/Shikoti/2363 and Bunyala/Namirama/1084, she explained, were assets that belonged to her and not the estate, and for that reason they were registered under her name. She asserted that Bunyala/Namirama/519 was never exchanged for Bunyala/Namirama/996. On the motor vehicles, she said they all belonged to her son.

27. There is documentation on record on the ownership of the assets in question. There is an official search certificate, dated 19th September 2011, showing the deceased to be proprietor of Bukhayo/Mundika/2113 since 1986. A search certificate for Bunyala/Namirama/519 dated 5th September 2011 shows the deceased was registered owner since 1981. A search certificate dated 5th September 2011 shows the deceased to be the registered owner of Bunyala/Namirama/983 since 1990. A search certificate in respect of Bunyala/Namirama/478, dated 5th September 2011, shows that the deceased was registered proprietor of that property since 1970. There is also on record a search certificate for Butsotso/Shikoti/1673, dated 15th June 2012, showing that the said property was registered in the name of George Maleya Nyaligu sometime in 1985. A green card and a tile deed for Butsotso/Shikoti/2363 shows that the same was originally registered in 1983 in favour of Mariko Mahiala Mubira and Canute Paneras Khamala, before being transferred, on 14th October 1988, to the administratrix. A search certificate dated 12th October 2012 and a title deed dated 15th May 1987 indicate the administratrix to be the proprietor of Bunyala/Namirama/1084 since 15th April 1987.

28. The administrator, at the oral hearing, conceded that the motor vehicles did not belong to the estate but to a son of the deceased who bought them. With respect to the assets that are in the name of the administratrix, the administrator argued that they were originally in the name of the deceased, but were transferred to the name of the administratrix subsequently. He led no evidence to support that contention. The documentation on the registration of the said assets tell a different story. I shall, therefore, find that the assets in the name of the administratrix were not shown to have been estate property transferred to her, she did not hold the same in trust, and the same do not belong to the estate and are not available for distribution.

29. From the documents available, therefore, the assets that are registered in the name of the deceased and which should be available for distribution, are Bunyala/Namirama/478, 519 and 983, and Bukhayo/Mundika/2113. However, since it is alleged and contested that two of the assets, Bunyala/Namirama/519 and Bukhayo/Mundika/2113, were sold to third parties, the two assets should be taken out of the schedule of the assets for distribution to allow the alleged buyers prove their entitlement to them through a suit filed at the appropriate forum.

30. The next thing for consideration is with respect to distribution, the shares to be allocated to the persons beneficially entitled. The administratrix allotted shares of the two assets that she considered available for distribution amongst eight(8) individuals, who are all sons of the deceased. This is curious given that she had identified the survivors of the deceased to be fifteen(15) persons, including herself and daughters of the deceased. The allocation of shares left out the daughters completely, yet she had not provided any proof that the daughters consented to that discriminatory mode of distribution. On his part, the administrator proposed distribution of the assets that he claimed were

available for distribution, amongst the two houses. That was no doubt, in keeping with section 40 of the Law of Succession Act, for the deceased died a polygamist. However, that proposed distribution would still require the concurrence of all the other family members.

31. Rule 40(8) of the Probate and Administration Rules, does not declare so in loud language, but it quietly requires administrators, when applying for confirmation of their grants to file a consent, in Form 17, contemporaneously with the application, signed by all dependants and other persons who may be beneficially entitled. Under that provision, a confirmation application may be disposed of by the court, without hearing any party, so long as no affidavit of protest has been filed and all the persons beneficially entitled have executed consents in Form 17. However, where there is an affidavit of protest on record or where any person who is beneficially interested in the estate has not signed the consent in Form 17, then the court should not proceed to give orders on distribution before it has heard such persons. That is the purport of Rule 40(8). For avoidance of doubt the same says as follows:

“Where no affidavit of protest has been filed the summons and affidavit shall without delay be placed by the registrar before the court by which the grant was issued which may, on receipt of the consent in writing in Form 17 of all dependants or other persons who may be beneficially entitled, allow the application without the attendance of any person; but where an affidavit of protest has been filed or any of the persons beneficially entitled has not consented in writing the court shall order that the matter be set down as soon as may be for directions un chambers on notice if Form 74 to the applicant, the protestor and such other person as the court thinks fit.”

32. From the language of Rule 40(8), where there is a protest, such as in the instant case, the court handling the matter, should pay attention to the issues raised in the protest as well as address the question to whether the other persons beneficially interested in the estate have had a say to the distribution proposed. That is the utility of Form 17. It should not just be a matter between the administrator and the protestor, all the other persons, having a beneficial interest in the estate must also be heard. Their input to the proposed distribution is through Form 17. If it is found that they have not executed any consents in Form 17, then the court ought to arrange to hear them. Rule 40(8) is in mandatory terms, and should be read together with Rule 41(1), with respect to such persons being heard, which says as follows:

“At the hearing of the application for confirmation the court shall first read out in the language or respective languages in which they appear the application, the grant, the affidavits and any written protests which have been filed and shall hear the applicant and each protestor and any other person interested, whether such person appear personally or by advocate or by a representative.”

33. It is my finding that the oral hearing conducted herein only gave a platform for the administratrix and her co-administrator, the protestor herein, but the other persons who were beneficially interested in the estate were not heard. They did not execute the consents in the form envisaged in Rule 40(8), in the nature of Form 17. Both Rules 40(8) and 41(1) of the Probate and Administration Rules are in mandatory language. Both provisions need to comply with them before final orders are made.

34. The final orders that I shall make in the end are:

(a) That I hereby postpone confirmation of the grant herein, in terms of section 71(2)(d) of the Law of Succession Act, to allow the administratrix and administrator comply with Rule 40(8) of the Probate and Administration Rules, by filing the consent envisaged therein in terms on Form 17;

(b) That the matter shall thereafter be mentioned to confirm compliance and to assess whether there would be need to hear the other persons beneficially entitled in terms of Rule 41(1) of the Probate and Administration Rules; and

(c) That the matter shall be mentioned on a date to be given at the delivery of this judgment.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 7th DAY OF FEBRUARY 2020

W. MUSYOKA

JUDGE