



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**SUCCESSION CAUSE NO. 143 OF 2010**

**IN THE MATTER OF THE ESTATE OF THE LATE STANLEY MBURUGU M'ITONGA – DECEASED**

**LUCY WAIRIMU NDIRANGU.....APPLICANT**

**VERSUS**

**M'ITONGA M'ITURUCHIU**

**JULIUS KINYUA MUTONGA..... PETITIONERS**

**RULING**

1. On 19/11/2018 the parties herein entered into a consent and agreed that Kshs. 300,000 shall be paid to the widow of the deceased, Lucy Wairimu Ndirangu from the public trustee Embu. They also stated that the said account was unfrozen for the purpose of the order.

2. However, Mrs Ntaragwi advocate of the applicant/protestor indicated that the money that was being held at the Public trustee is Kshs. 830,000 and after the widow gets the Kshs. 300,000 a balance will remain. On 8/7/2020 she made an application that the balance of Kshs. 530,000 and interest be shared equally between the 3 children of the deceased.

3. It was held in **In Re Estate of John Musambayi Katumanga – deceased [2014] eKLR Musyoka J**, that:-

**“The spirit of Part V, especially Sections 35, 38 and 40, is equal distribution, of the intestate estate amongst the children of the deceased. There have been debates on whether the distribution should be equal or equitable. My reading of these provisions is that they envisage equal distribution for the word used in Sections 35(5) and 38 is ‘equally’ as opposed to ‘equitably’. This is the plain language of the provisions. The provisions are in mandatory terms – the property “shall ... be equally divided among the surviving children.” Equal distribution is envisaged regardless of the ages, gender and financial status of the children.”**

4. But, I wish to advance the debate on some quite different angle. While courts should be guided by the principle of equality in distribution of the estate of the deceased, they should be aware of other situations provided in the law of Succession Act, for instance, in section 26, 28 and 42 which may temper the symmetry. Just stating.

5. That notwithstanding, in light of the above, I order that the balance of Kshs. 530,000 (together with interest, if any) held by the Public Trustee be divided equally among the deceased’s surviving children, namely;

**I. Brenda Kathure**

**II. Linnet Kananu**

**III. Kennedy Kiogora**

6. It is so ordered

**Dated, signed and delivered at Meru this 15<sup>th</sup> day of October 2020**

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**F. GIKONYO**

**JUDGE**

Representation

Mrs. Ntarangwi for objector

Mwiti for petitioners

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**F. GIKONYO**

**JUDGE**