

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO 1329 OF 2012

IN THE MATTER OF THE ESTATE OF DAVID ATABACHI AMONYELA

RULING

1. A ruling was delivered herein on 17th July 2020, directing the administrators herein to file affidavits to confirm the status of Ann Mukhobi as the daughter of Alfred Mukhobi, and to have all the children of Francis Imbase file consents in Form No 37, to confirm whether they support the proposals made on distribution made by the applicant, in his application dated 4th June 2019.

2. The affidavit and Form 37 were filed on the 30th September 2020, as directed by court, and, on 5th October 2020, the children of Francis Imbase attended court, and confirmed their agreement to the mode of distribution proposed. With regard to Ann Mukhobi, evidence was led that she could not be traced and neither could her mother. As already ascertained in the ruling, the assets available for distribution in the estate are Kakamega/Lugose/8 and 413. It is also clear, as per the consent, that the proposed beneficiaries of these parcels are Cornelius Imbase, Cedrick Shikunzi, Pencilus Mwaleme, Khatambi Imbase, Morris Utunga Atabachi, Felix Makhule Atabachi.

3. The mode of distribution proposed shares the assets as follows: Kakamega/Lugose/8, to be shared equally between Cornelius Imbase, Cedrick Shikunzi, Pencilus Mwaleme and Khatambi Imbase, equally; and Kakamega/Lugose /413 to be share equally between Morris Utunga Atabachi and Felix Makhule Atabachi. The proposal, excludes Ann Mukhobi, who is a daughter Alfred Mukhobi, for the reason that she cannot be traced.

4. In *Tabitha Wanjiku Mwangi vs. Anne Muthoni Njuguna & 4 others* [2016] eKLR, the court observed that a beneficiary whose whereabouts were unknown is still entitled to inherit from her late father's estate. The court, in *In re Estate of MG (Deceased)* [2020] eKLR, when dealing with the issue of a beneficiary whose whereabouts were unknown, held that:

“11. In addition, I noted from the same Summons for confirmation of Grant that one son of the deceased one JK is said not to have been traced. On that alleged fact, the administrator went ahead to disinherit him. Surely he ought to know he cannot do that as has no such authority. For as long JK has not been declared dead, as long as he is believed to be alive and has not been declared dead, his siblings cannot be allowed to simply wish him away. His share of the estate ought to be held in trust until it can be determined that he cannot be traced at all. This court cannot preside over the kind of mismanagement of the estate, amounting to disinheriting one who is most vulnerable and the one who is lost.”

5. In the instant cause, the administrators have not demonstrated any efforts made by them to trace the said Ann Mukhobi, and as stated above, the mere fact that she cannot be traced does not mean that she will be disinherited. In the circumstances, the said Ann Mukhobi is entitled to inherit from her late father's share, Alfred Mukhobi, and must be provided for.

6. The estate shall be distributed as follows. Kakamega /Lugose/8 to be shared equally between Cornelius Imbase, Cedrick Shikunzi, Pencilus Mwaleme and Khatambi Imbase. Kakamega/Lugose /413, measuring approximately 1.3 hectares, shall be shared as follows: Morris Utunga Atabachi (0.65 HA), Felix Makhule Atabachi (0.325 HA), and Ann Mukhobi (0.325 HA). The share due to Ann Mukhobi shall be held in trust for her by Felix Makhule Atabachi. A certificate of confirmation of grant shall issue in those terms. It is so ordered

7. Any party aggrieved by the orders above has leave of twenty-eight (28) days, to move the Court of Appeal, appropriately.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 4TH DAY OF DECEMBER, 2020

W MUSYOKA

JUDGE