



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 1015 OF 2006**

**IN THE MATTER OF THE ESTATE OF FRANCIS MUSYOKA KIETI (DECEASED)**

**JUDGMENT**

1. The deceased herein died on 13<sup>th</sup> December 2005. Representation to his estate was sought herein by Anastacia Ndunge Mutangili and Catherine Mwendu Philliph, in their respective capacities as widow and sister-in-law of the deceased, respectively. According to the affidavit filed in support of the petition the deceased was expressed to have been survived by the widow, and the following children – Elizabeth Mwikali Kieti, Joseph Muli Kieti and David Mwanzia Kieti. He was expressed to have died possessed of two motor vehicles, money in two bank accounts and terminal benefits at the deceased’s former place of employment. A grant of letters of administration intestate was made to the petitioners on 16<sup>th</sup> January 2007.

2. There are three applications for determination, dated 14<sup>th</sup> March 2007, 3<sup>rd</sup> May 2011 and 21<sup>st</sup> July 2011.

3. The application dated 14<sup>th</sup> March 2007 seeks revocation of the grant made on 16<sup>th</sup> January 2007 on grounds that the same had not provided for the mother of the deceased and the deceased’s late wife, and that the widow had chased away the deceased’s child from his first marriage from home, that child’s consent had not been obtained, that the co-administrator was not a member of the family of the deceased and that no provision had been made for all the dependants of the deceased. The said application was at the instance of Peter Kieti Muthiani, a brother of the deceased. His affidavit in support was sworn on even date. He averred that the deceased had married two wives, the first administrator herein and the late Florence Kagendo Kieti. The said Florence Kagendo Kieti had been survived by a daughter, Elizabeth Mwikali Kieti, whom the first administrator was accused of chasing from home. It is averred the deceased had made an oral will in which he had indicated that he had wished the applicant be one of the administrators of his estate. It is also said that the deceased’s aged mother had not been listed as a survivor of the deceased.

4. In response to that affidavit, the first administrator swore an affidavit on 1<sup>st</sup> October 2007. She explains that she had applied jointly with her sister as the other beneficiaries were minors. She also explains that Joseph Muli Kieti and David Mwanzia Kieti were her own children with the deceased, while Elizabeth Mwikali Kieti was the deceased’s daughter with the late Florence Kagendo Njeru. She states that when she married the deceased he was living alone, but he had informed her that he had had a child from a previous relationship that he had had with the said Florence Kagendo Njeru. She asserts that the said late Florence Kagendo Njeru was not a wife of the deceased, and denies that she had chased away Elizabeth Mwikali Kieti from home. She states that the applicant was not a beneficiary of the estate of the deceased and therefore he lacked the locus to bring the application. She states that her mother-in-law was of age and should have brought the application personally instead of doing so through proxy. She also contends that Elizabeth Mwikali Kieti had reached age of majority and could bring the application herself. She states that the applicant’s application was actuated by malice and his dislike of her, and not for the altruistic reasons purported in the application.

5. Elizabeth Mwikali Kieti was enjoined to the proceedings vide a court order made on 5<sup>th</sup> November 2007, whereupon she swore an affidavit on 27<sup>th</sup> March 2008 in response to the application, where she indicates her name to be Lizabeth Mwikali Kieti. She states that she is a daughter of the deceased and that her mother was deceased. She says that she recognizes the first administrator as her stepmother, the former having been married following the death of her mother. She also confirms that the first administrator had two children with the deceased. She objects to the presence of the second administrator and the objector in the affairs of the estate of the deceased. She, however, feels that her grandmother should be provided for she blames the applicant for her woes. She proposes that the first administrator be given 50% of the estate, the mother of the deceased 15% and herself the balance of 35%.

6. The application dated 3<sup>rd</sup> May 2011 is brought at the instance of the administrators. They seek confirmation of the grant. They identify the deceased as having been survived by this three children and his aged mother. They identify the assets of the estate available for distribution to be motor vehicles KAQ 111H and KAQ 736S, money in accounts at National Bank of Kenya Limited and the Cooperative Bank of Kenya Limited. It is stated that the vehicles were sold for maintenance of the minor children and to settle certain debts. It is proposed that the money in the bank be shared out between the first administrator, the mother of the deceased and Lizabeth Mwikali Kieti as follows - Lizabeth Mwikali Kieti and the mother of the deceased to get KHz 30, 000.00 each with the balance, of KHz 37, 458.00, going to the first administrator.

7. Lizabeth Mwikali Kieti filed an affidavit of protest sworn on 12<sup>th</sup> July 2011, which essentially adopted the contents of her affidavit of 28<sup>th</sup>

March 2008. She swore a further affidavit on 9<sup>th</sup> January 2013 to place before the court documents from the Department of Defence, which showed that the first administrator had been paid a portion of the pension and the balance was unpaid on account of the pendency of the instant proceedings.

8. Amina Mutio swore an affidavit of protest on 21<sup>th</sup> July 2011. She complains that the proposed distribution did not cater for her and her children. She asserts to be the first wife, and says that the first administrator had received pension benefits that she had not accounted for.

9. There is another affidavit of protest on record. It was sworn by Peter Muthiani Kieti on 7<sup>th</sup> October 2011. He says that the proposed distribution was not fair as it did not take into account all the beneficiaries, especially Amina Mutio and her four children. He also says that the first administrator had not accounted for money that she had received from the Department of Defence, and that she had not included all the assets of the estate in the application, being three pieces of land in the Tala area of Machakos County, registration details of which are not provided. He also claims that Lizabeth Mwikali Kieti had not been adequately provided for and that the first administrator had wasted the estate.

10. The application dated 21<sup>st</sup> July 2011 is at the instance of Amina Mutio. She avers to be a widow of the deceased, out of which union there were four children, named as Riziki, Zainabu, Jaffer and Shem. She states that she was not aware of the proceedings, and she and her children had not been listed as survivors of the deceased. She would like herself and her children provided for. She states that it was while following the deceased's terminal benefits at his former place of employment that she was referred to the court. She says that her brother-in-law, Peter Muthiani Kieti, was not opposed to her being recognized as a dependant of the deceased. She proposes that the grant be revoked and that a fresh grant be made in her name and those of Anastacia Ndunge Mutangili and Peter Muthiani Kieti. Amina Mutio swore a further affidavit on 16<sup>th</sup> July 2012 to attach documents showing that she and the deceased had four children between them. She states that her children were dependent on the deceased, and that theirs should Amina Mutio be treated as a polygamous marriage Amina Mutio.

11. Anastacia Ndunge Mutangili has reacted to the application through her affidavit sworn on 14<sup>th</sup> February 2012. She asserts that Amina Mutio was never married to the deceased, and the children listed as his were not his. She also states that Peter Muthiani Kieti was not a beneficiary of the estate and there was no point of having him involved in the administration of the estate. She points out that Peter Muthiani Kieti had instructed the firm of Omwoyo Momanyi and Gichuki Advocates to mount the summons for revocation of grant dated 14<sup>th</sup> March 2007, which Aluoch J allegedly rejected save for the recognition of Lizabeth Mwikali Kieti and the mother of the deceased as beneficiaries.

12. The applications were disposed orally. The hearing commenced on 12<sup>th</sup> October 2016, with the first administrator, Anastacia Ndunge Mutangili, being the first to take the stand. Her testimony largely, mirrored the averments made in her various affidavits. The additional aspects relate to what she said about Amina Mutio. She said that she had not heard of her prior the deceased's death, and that she did not see her and her children at the deceased's funeral, neither did her name and that of her children feature at that event. On Amina Mutio's children, she said that the birth certificates placed on record did not reflect the deceased as their father, save for one child, but she pointed out that all those certificates were obtained after the deceased's death. She said that the deceased never told her about Amina nor her children. About Lizabeth, it was her evidence that she did not chase her away, instead it was Peter Muthiani Kieti who lured her away on the basis that he would take care of her. She said that after she received part of the pension money, she went to her school to settle school fees only to find that she had left the school ostensibly to live with Peter Muthiani Kieti. She conceded though that Lizabeth did not benefit from the proceeds of the vehicles she sold. She said that although she knew that the deceased had an ancestral home, she was unaware of his other assets.

13. Lizabeth Mwikali Kieti followed. She gave vent to the averments in her several affidavits. She said she acknowledged Anastacia Ndunge Mutangili as her stepmother and her children as her brothers. About Amina Mutio she said that she was a close friend of the deceased, but she was never married to him, and she never recognized her as her stepmother. She said that she did not regard Amina's children as her siblings. She stated that Amina Mutio and her children would visit the deceased's clinic at Mombasa, but they were not introduced to her as family members. She mentioned that the children were older than her, save for the last born, Shem, whom she met at the deceased's funeral. According to her, the visits ceased after the deceased married Anastacia Ndunge Mutangili. On distribution, she said that she wanted the court to take into account what Anastacia Ndunge Mutangili had collected.

14. The next witness was Peter Muthiani Kieti. He testified that the deceased was his brother, who had married three wives, the first being Kagendo, followed by Amina and Anastacia, who had one, four and two children, respectively. He referred to a letter that he had obtained from the District Commissioner for Matungulu Division, which carried information to that effect. He said the letter was the same one that was attached to the affidavit that Amina swore on 21<sup>st</sup> July 2011. He said his interest in the matter was that the deceased before he died had asked him to take care of his children. He said Amina should be made an administrator of the estate. He stated that Amina was married under Kamba customary law. He said that there was a ceremony at Nguluni, on a date he could not recall. It involved delivery of five goats, one of which was slaughtered. He put the year at 1987 or thereabout. When Anastacia came later into the life of the deceased, the witness allegedly asked Amina to step aside so that Anastacia could give the deceased children of his own. He said that the deceased had a child with Amina, but he could not recall the name of that child. He stated that it was the deceased who told him about the said child. He said that Lizabeth lived with Amina at Mombasa and Nairobi. He said that he never visited the house where Amina lived. He said that the deceased had built a house at the ancestral home, which he later stated was built for their mother, and that it was his son who was staying in the house. He asserted that the deceased had not built a house for any of his wives. He said that he was in the proceedings to stake a claim for the family, but saying that he was not interested in the assets of the deceased. He said that the only wife of the deceased who lived upcountry was Amina, and that was the wife that their mother knew to be the true wife of his son. He said that he had no documents showing that the deceased was married to Amina, nor photographs at family functions where both the deceased and Amina appeared. He said that after the customary law ceremony of 1987, Amina and the deceased did not come back for any family functions together. He also said he was himself to staying upcountry, and that although there were burial and marriage ceremonies, the deceased never attended them together with Amina, instead he would come alone. He said that there was a funeral programme for the deceased's burial, but he did not have a copy and could not tell whether Amina featured in it. He stated that she did not attend the funeral. About Lizabeth, he said that he took her to school, but she was running away from school. He said that she was not abandoned, instead she absconded from the family. He said that he was not aware that Anastacia received money from the Department of Defence, asserting that their mother was not paid anything. He suggested that the larger share of the estate should go to Anastacia as the deceased was paying a lot of attention on her children, saying that he wanted them to go far in their education.

15. The next witness was Gilbert Gichuki, an officer, of the rank of Major, from the Department of Defence, in charge of records. He said he had records relating to the deceased. He confirmed that the deceased was a member of the armed forces, having been hired at the Kenya Navy. According to those records, the deceased had registered two spouses, Florence Kagendo, who was said to be deceased, and Anastacia Ndunge. The records were signed by the deceased himself. After he died, death benefits were to be paid to his surviving widow and children, that is Elizabeth Mwikali, Joseph Muli and David Mwanzia. He said the widow was paid a death gratuity of Kshs 5, 268, 000.00, and the department was still holding more money, being, subject to computation by Treasury, Kshs. 5, 268, 099.60, being the monthly pension the deceased would have drawn had he remained alive. He explained that the dependants were entitled to Kshs. 87, 801.00 monthly pension for five years which totaled to Kshs. 5, 268, 000.00. Then there was a widow's pension of Kshs 18, 641.00 per month payable for five years, making a total of Kshs. 1, 342, 140.88. The children were also entitled to certain amounts of money until they attained twenty-one years of age. He explained that the amount paid so far was separate from the monthly payments due. He stated that they paid to the person who was holding a grant of representation to the estate of the deceased. He stated that the information of the person entitled to the pension or death benefits was supplied by the deceased. He stated that according to the information in his records the deceased had married Florence Kagendo in 1975 and Anastacia in 1997. The records had also indicated that he had divorced Florence Kagendo. He said that the record did not have entries indicating that the deceased had married Amina Mutio in 1987 or at all. He said that as a military they did not entertain claims from third parties, and that they dealt only with those persons that the deceased mentioned as his dependants.

16. Amina Mutio testified last. She said that she was a widow of the deceased, having married him in 1987 under customary law. She said that they cohabited at Mombasa and Nairobi. She stated that she had children previous to marrying the deceased, and the deceased had adopted them. She said that the deceased's first wife was not able to give the deceased children so he took Amina's children and adopted them, although there was no legal adoption process. She said that the deceased had adopted all of her four children. She said that none of them was sired by the deceased. She said that her last born child was born in 1999 while she was married to the deceased. She said that it was the deceased who chose to have her children use his name, and it was he who processed the birth certificates. She said that the deceased married Anastacia during the subsistence of their marriage. And that although she was jealous she accepted the same. She said that it was Peter Kieti who informed her of the deceased's intent to marry Anastacia. She said that the deceased asked her to remain in Nairobi so that he could live with Anastacia in Mombasa. He introduced them at Mombasa. She said that she was the one who arranged the adoption of Elizabeth by Florence Kagendo, and upon her mother's death she raised her together with her children. She later said that she did not live with Elizabeth, and that the latter only used to visit her. She also talked of meetings at the Department of Defence involving her, the deceased's mother, Elizabeth and Peter Kieti, which Anastacia did not attend. She said she gave details of her bank account to the department but she later heard that Anastacia had been paid a sum of Kshs.5,000, 000.00 through the back door. She said that she was isolated after the deceased died, but she nevertheless attended the burial. She said that Anastacia was not known at home, and it was her who was at home taking care of it and the deceased's grave. She said that she lived with the deceased at various addresses within Nairobi, and that Peter Kieti used to visit them frequently. She mentioned that there was a customary law marriage ceremony at Nguluni, Tala, during which dowry was paid and a goat slaughtered. She later said that no dowry was paid to her parents, but her mother had been promised a farm. She said that she had no documentary record of the ceremony, nor photographs thereof. She stated that the address that she used in her affidavits was Peter Kieti's, adding that whenever she needed anything she usually depended on Peter Kieti. She said that she could not deny that her affidavits were drawn by Peter Kieti and that she only signed them. She said that she and him had been working in collaboration. She said that her co-wives were Christians while she was a Muslim and there was therefore enmity between them.

17. At the close of the oral hearings the parties filed written submissions. I have read through them

18. Having read through the pleadings and the recorded oral evidence, the issues that I have identified for determination are as follows-

- (a) Who were the individuals who survived the deceased and are therefore entitled to a share in his estate?
- (b) Who are the persons who are entitled to administer the estate of the deceased?
- (c) What are the assets that make up the estate of the deceased?
- (d) How are those assets going to be distributed amongst the survivors of the deceased?

19. On who are entitled to the estate, the starting point should be that the observation that the deceased died intestate, as no valid will made by him has been brought forth. He died in 2005, long after the Law of Succession Act, Cap 160, Laws of Kenya had come into operation in 1981. The person who should be entitled to a share in his estate are to be determined on the basis of the provisions of Part V of the Law of Succession Act, which deal with inheritance upon intestacy. According to those provisions, the persons entitled in intestacy are, in order of priority, the surviving spouse or spouses, children, parents, siblings, other relatives and the state. The surviving spouse is said to have the biggest stake in the estate. Even then, he or she shares the estate with any surviving children of the deceased. Which then means that surviving spouses and children are banded together. The other surviving relatives of the deceased would access the estate only where there is no surviving spouse or surviving children. Outside of the nucleus family, the parents of the deceased come first, followed by the siblings of the deceased, with the siblings taking only if the deceased was not survived by parents. Where the deceased is survived by spouse and or children, the other relatives can only access the estate through section 26 of the Law of Succession Act, on an application for reasonable provision.

20. In the instant case, the deceased was survived by persons who claim to be spouses, children, parents and siblings. The persons of immediate concern are the spouses and the children. Of the spouses, there are two claimants, Anastacia and Amina, and of the children are Elizabeth and the children of Anastacia and the children of Amina.

21. I shall first consider the case of the spouses, and answer the question, whether Anastacia and Amina were surviving spouses of the deceased. There is no dispute at all concerning the status of Anastacia. She is recognized as such by Amina, the deceased's daughter Elizabeth and the deceased's brother Peter Muthiani Kieti. I do not therefore have to make a determination as to whether or not she was a wife of the deceased during his lifetime, and that she survived him upon his demise. The case of Amina is different. Her status as a surviving spouse is contested. Whereas she claims to have had been married to the deceased during his lifetime, meaning that she was his surviving widow. That is contested by Anastacia and the deceased's daughter Elizabeth. The only person who supports her contention is Peter

Muthiani Kieti, the deceased's brother.

22. Was Amina married to the deceased? She asserts that she was the deceased's first wife having been married at customary law. She refers to a ceremony of marriage allegedly conducted sometime in 1987 at her parents' home. The deceased's brother has also alluded to the same. However, the testimony is a little inconsistent. In one breathe she said that dowry was paid, and in the other she said that it was not, her mother had instead been promised that she would be bought a farm and have a house constructed for her. She claimed that she cohabited with the deceased mainly at Nairobi, yet he worked in Mombasa. She does not appear to have had played any role at all at his burial, if at all she attended it. She was not able to produce any document or record suggesting any such marriage, like a book where the customary law marriage event was recorded or an affidavit of marriage or some employment record or a photograph of her and the deceased at some social function. The deceased himself did not appear to have regarded her as her spouse for the records produced from the Department of Defence did not bear her name, yet the details therein were provided by the deceased himself. Her witness, Peter Muthiani Kieti, did not help her case either. When he mounted the application dated 14<sup>th</sup> March 2007 for revocation of the grant of 16<sup>th</sup> January 2007, he swore an affidavit in support where he averred that the deceased had married two wives, Florence Kagendo Kieti and Anastacia Ndunge Mutangili, he did not mention Amina Mutio as one of the said wives. His averments later in subsequent affidavits and in his oral testimony in court, that Amina Mutio was the deceased's wife, are inconstant with the statement in the affidavit of 14<sup>th</sup> March 2007. He did not seek to explain the said inconsistent in his subsequent pronouncements. I am not persuaded that Amina Mutio was ever married to the deceased, and it is my finding that she was not his surviving spouse. She might have had a liaison or fling with the deceased, but the same never matured into marriage.

23. On the question who the surviving children of the deceased were, there is no contest that Elizabeth and the children of Anastacia were *bona fide* surviving children of the deceased. I need not therefore have to deal with the question of their status any further. Amina and Peter assert that Amina's children had survived the deceased. Amina herself testified that the deceased was not the biological father of all four of her children and that he had merely adopted them informally. That was a remarkable thing to say given that she had placed before court birth certificates of these children, one of which indicated the deceased as the father of the child. I have already found that Amina was not a wife of the deceased, so the question of the deceased informally adopting her children could not possibly arise. Consequently, I shall hold that the said children were not children for the purposes of succession in this case.

24. The mother of the deceased has been mentioned as one of the heirs. As stated above, the deceased died intestate. Part V of the Law of Succession Act governs the intestate succession to his estate. The deceased was survived by a spouse and children, and by virtue of Part V of the Act, that ought to exclude or lock out any other surviving relative of the deceased, including his mother. His mother could only access the estate through section 26 of the Law of Succession Act as a dependant. I have perused through the record before me and I have not seen any application by the mother brought under section 26 of the Act. I therefore do not find any basis upon which I can hold that she was one of the heirs of the estate. I have, however, seen the consent order recorded on 5<sup>th</sup> November 2007, and it is only on that account that I shall make an order for the making of an *ex gratia* payment to her.

25. Peter Muthiani Kieti, the brother of the deceased, is a lesser survivor, as the deceased was survived by a spouse and children and a parent. His claim is lesser to those of the three categories that I have mentioned above. It should be noted though that he stakes no claim whatsoever to the estate. It would appear that his role in these proceedings is to muddy the waters. He appeared to initially be fighting at Elizabeth's corner, but when Elizabeth denounced him in her affidavit of 27<sup>th</sup> March 2008, he shifted gears and hoisted Amina Mutio and began to push her case. He is not one of the heirs to the estate of the deceased.

26. I have seen a submission that Catherine Mwendu Phillip is not entitled to a share in the estate as she was an outsider to the family, being a sister-in-law of the deceased. I have not seen any claim by her to the estate, her role is that of a co-administrator, and the widow explained that she was involved merely because she was not in good terms with the other family members who were qualified to seek representation jointly with her, yet she had to comply with section 58 of the Law of Succession Act on account of the continuing trust. She is not a survivor of the deceased and she is not entitled to a share in the estate.

27. The next question for consideration is who is entitled to representation in this cause? Paragraph 26 here above explains the circumstances under which the widow ended up obtaining representation jointly with her sister. Section 66 of the Law of Succession Act sets out in order of priority the persons who are entitled in intestacy to administration. Part V of the Law of Succession Act provides a useful guide. The right to administration is dependent on the right to inherit in intestacy. Priority is given to the surviving spouse, followed by the children of the deceased, followed by the parents of the deceased, followed by the siblings of the deceased and other relatives according to the degree of consanguinity. Going by that order priority goes to Anastacia, followed by Elizabeth who is now an adult, then the mother of the deceased and then Peter Muthiani Kieti comes last. Section 66 gives discretion to the court, and therefore the court is not bound by the list in the provision.

28. What assets make up the estate? There is money in the bank. It would appear that there is ancestral land at Tala and some plots within the same locality, but details have not been given, so the court will only deal with the assets that are certain. The main contest appears to be on the pension and related death benefits held by the Department of Defence. Evidence was adduced that there is an outstanding sum of Kshs.5, 268, 000.00 being a death benefit. The other amounts should go directly to the widow and to the children.

29. The question that I need to consider next is whether the death gratuity formed part of the estate of the deceased. As at the date of the deceased's death the law governing members of the armed forces was the Armed Forces Act, Cap 199, Laws of Kenya, now repealed. The provisions of the said law which were relevant to the dispute herein are sections 218 and 220(2), which stated as follows –

*'218 (1). Every officer on being commissioned and every serviceman on enlistment shall give particulars of the place and district in which he ordinarily resides and the name and address of his next of kin, and those particulars shall be recorded at the headquarters of his unit.*

*(2). the record shall be verified periodically, and it shall be the duty of the officer or serviceman to report any alteration which may occur in the recorded particulars.*

219 ...

220 (1) ...

*(2) Where a member of the armed forces dies without leaving a valid will, the paymaster or any officer having in his charge or control any pay, accumulation of pay, gratuity or other money or any movable property belonging to the member shall pay or deliver it to the Public Trustee together with a copy of the record specified in section 218 of this Act and the Public Trustee shall administer and distribute the money or property in accordance with the Public Trustee Act or may grant a certificate as provided in section 4 of that Act.'*

30. The gratuity payable by the Department of Defence to the Public Trustee, as per the provisions, is so that the same can be administered as part of the estate of the deceased. Administration denotes distribution thereof amongst the next of kin and the persons provided by the officer as his dependants. Of course in cases where an administrator has been appointed under the Law of Succession Act, the money need not be released to the Public Trustee, instead it is paid to the administrator appointed under the Law of Succession Act, to be administered in accordance with the provisions of the Law of Succession Act. That would mean, in the instant case, the outstanding death gratuity ought to be released to the administrators herein for distribution amongst the survivors of the deceased. The pensions due to the widow and the children do not form part of the estate and should be released directly to them without passing through the administrators.

31. How should the death gratuity herein be distributed amongst the survivors? The widow received the first payment in lump sum. She did not share it with Elizabeth, but spent it on her own needs and those of her children. She also sold two vehicles, and spent the proceeds of sale on herself and her children exclusively. That should be taken into account, and so should the fact her children are the youngest survivors of the deceased who ought to be seen through school. The mother of the deceased is said to be aged eighty-five years, or so, and shall be paid *ex gratia*.

32. In the end the orders that I feel moved to make in the circumstances are as follows -

**(a) That I hereby declare that the deceased was survived by Anastacia Ndunge Mutangili, Elizabeth Mwikali Kieti, Joseph Muli Kieti and David Mwanzia Kieti, with his mother Mwikali Muthiani being treated as an additional beneficiary;**

**(b) That I hereby revoke the grant made on 16<sup>th</sup> January 2007 to Anastacia Ndunge Mutangili and Catherine Mwende Philliph and I hereby appoint Anastacia Ndunge Mutangili and Elizabeth Mwikali Kieti administrator of the estate of the deceased;**

**(c) That a grant of letters of administration intestate shall issue accordingly;**

**(d) That I hereby confirm the grant made in (b) so that the money in the bank accounts and the death annuity from the Department of Defence is distributed as follows –**

**(i) a lump sum payment of Kshs. 400, 000.00 to Mwikali Muthiani;**

**(ii) 65% of the balance to Anastacia Ndunge Mutangili, for her own benefit and that of her children; and**

**(iii) 35% of the balance to Elizabeth Mwikali Kieti;**

**(e) That costs of the application shall be in the cause; and**

**(f) That in the event any party is aggrieved by the orders that I have made herein above there is liberty to challenge the same at the Court of Appeal within twenty-eight (28) days of date hereof.**

**PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 31<sup>st</sup> DAY OF January, 2019**

**W. MUSYOKA**

**JUDGE**

**DATED, SIGNED and DELIVERED at NAIROBI this 15<sup>th</sup> DAY OF February, 2019**

**ASENATH ONGERI**

**JUDGE**