



**REPUBLIC OF KENYA**

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

**P & A SUCCESSION CAUSE NO. 227 OF 2013**

**IN THE MATTER OF THE ESTATE OF THE LATE ALEXANDER OMWENE MANDI**

**RAPHAEL RATEMO**

**DENNIS OMWENE.....PETITIONERS/ RESPONDENTS**

**AND**

**EMILY NAKHANU MUSINAI.....OBJECTOR/ PROTESTOR**

**RULING**

1. On the 21<sup>st</sup> September 2017 Raphael Ratemo and Dennis Omwene the petitioners in this cause filed an application to have the grant of letters issued on the 10<sup>th</sup> of February 2014 confirmed. The deceased Alexander Omwene passed on the 30<sup>th</sup> of October 2010. In their schedule of distribution dated the 11<sup>th</sup> of November 2017 the petitioners proposed the following mode of distribution;

- i. East Bukusu North Sangalo 3201 (comprising of 14 units) each beneficiary to be given unit each, the remaining 6 units to cater for the maintenance of the administrator of the said units and the same to be under the management of the administrator herein.
- ii. Deceased benefits at National Social Security Funds membership no. 703816624, Nzoia Sugar Co. Ltd to be shared equally amongst all the beneficiaries. For minor shares will be held in trust by the administrator while G M'S share be held by Emily Nakhanu Musinai
- iii. Deceased's workmanship compensation proceeds and or benefits at Nzoia Sugar Co. Ltd
- iv. Any other property of the estate of the deceased that may not have been disclosed to be shared equally among all the beneficiaries.

2. Emily Nakhanu Musinai filed an affidavit of protest on the 20<sup>th</sup> of September 2018. She claims to be the widow of the deceased. She avers that the deceased left behind L.R No. East Bukusu / North Sangalo/3201 where she resides with the minor G M O. That the deceased and her developed 14 units, 8 units are not occupied but only 6 units are occupied with each tenant paying a total sum of Kshs. 1,500/- making a total of 9000/- per month out of which she pays electricity between 2,500/- to 4,000/-leaving a balance of 6500/- or 5000/-. That she has made repairs on the rental units and she uses the balance to cater for the basic needs of the minor. That the petitioners have other parcels of land they have concealed.

3. In a further affidavit dated the 19<sup>th</sup> September 2018 Raphael Ratemo avers that the final dues of the deceased were Kshs. 416144.22 which should be shared between the beneficiaries. That the beneficiaries should get 2 units each from the 14 units single rooms which are within L.R. Bukusu/ North Sangalo/ 3201. That the daughters of the deceased namely Linet Kemunto of ID card No. \*\*\*\*\* and Everlyne Kwamboka of ID card No. \*\*\*\*\* have no objection to that.

4. Whilst in court Emily informed the court that out of the 14 units she used 4 units with Mzee and that she only gets 9000/-.

5. The issue for determination is distribution of the deceased's assets. The only assets that are for distribution as per the affidavits are; **East Bukusu/North Sangalo/3201, benefits from Nzoia Sugar Company**. It is not in dispute that parcel No.3201 has 14 units. Emily claims to have developed the same jointly with the deceased however she did not adduce any evidence to prove the same. The 14 units therefore shall be divided amongst the beneficiaries; each beneficiary shall get 2 units. The units for minors beneficiaries shall be held by the administrators and the two for G M O shall be held by Emily Nakhanu in trust for the said beneficiaries. The benefits from Nzoia Sugar Company Limited too shall be divided equally amongst the beneficiaries, Emily to hold the portion for G M O in trust. Similarly the administrators shall hold the portion for minors in trust until each attain the age of majority. No orders as to costs.

Dated, signed and delivered this 21<sup>st</sup> day **November 2018**.

**R.E. OUGO**

**JUDGE**

**In the presence of;**

**Mr. Karanga h/b Mr. Mainga for the Petitioners**

**Emily Nakhanu in person**

**Court Clerk Rael**