



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1872 OF 2012

IN THE MATTER OF THE ESTATE OF GODWIN GUYA OTIENO (DECEASED)

RULING

1. On 21st November 2014, I ordered the administrators herein to agree on the assets and liabilities of the estate and thereafter have the assets valued. It was only after that that I was to proceed to dispose of the pending summons for confirmation of grant dated 1st November 2013.

2. The parties hereto have not since then placed before me a schedule of agreed assets and liabilities. What has been placed on record is a bundle of valuation reports in respect of eight (8) immovable properties – that is to say Kisumu/Kadongo/3940, 4040, 4143, 4145, 4150, 4280, Plot No. 68 Holo Market and LR No. 15428 Nairobi. I shall presume that these are the assets that the parties have agreed form the estate of the deceased.

3. In the summons for confirmation, the applicant second widow had proposed that the first house, of Florence Janet Achieng, be allotted Kisumu/Kadongo/4143 and 4280, while the second house, of Kath Anyango, is allotted Kisumu/Kadongo/4145 and LR No. 15428 Nairobi. She further proposed that Kisumu/Kadongo/3940 and Plot No. 68 Holo Market be sold and the proceeds of sale utilised to settle debts and liabilities. Kisumu/Kadongo/4040 was to be shared equally.

4. The respondent first widow proposed that Kisumu/Kadongo/4280 and 4143, and Plot No. 68 Holo Market be allotted to her house; while Kisumu/Kadongo/3940 and 4145 be allotted to the second house. To settle the debts she proposed that LR No. 15428 Nairobi be sold, with the surplus to be shared out equally between the houses. Her case was that the disposal of Kisumu/Kadongo/3940 and Plot No. 68 Holo Market was unlikely to raise enough money to settle the debts.

5. The deceased was a polygamist, who was survived by two widows and seven children. In intestacy, according to section 40 of the Law of Succession Act, Cap 160, Laws of Kenya, division of such an estate is supposed to be to the houses, taking into account the number of children in each house. The first house comprises of a widow and four children, while the second house comprises of a widow and three children. So the ratio should be 5:4.

6. The proposals by the widows do not come anywhere close to the ratio of 5:4. The proposal by the first wife would mean that her house takes property worth Kshs. 2, 390, 000.00 as against Kshs. 1, 145, 000.00 by the second house. The second widow's proposals would mean that her house takes property worth Kshs. 13, 050, 000.00 as against Kshs 2, 090, 000.00 by the first house. Both proposals are not acceptable and the court shall proceed to determine what is more realistic.

7. The parties have not placed before me any document on the agreed debts and liabilities. It is the second widow who has stated the debts to be Kshs. 235, 000.00 owing to the Nairobi Hospital and Kshs. 313,

787.00 being the balance of the purchase price for plot No. 31 Kisumu Town. I have not seen much of a response from the first widow on the said matter. I shall take it that that figure is the lowest statement the debts owing by the estate.

8. The second widows proposal is that Kisumu/Kadongo/3940 and Plot No. 68 Holo Market be sold to offset those debts. Plot 31 is included in that proposal, but I shall ignore it as it was not valued, nor do I find a valuation report relating to it. The aggregate value of the two assets that have been valued is Kshs. 395,000.00 as against a debt of Kshs. 548,787.00. The proposal by the first widow is that the debts should be met from the sale of LR No. 15428 Nairobi, whose value according to the valuation reports is Kshs. 12, 000, 000.00.

9. I note from the proposals that both widows are at consensus *ad idem* with respect to Kisumu/Kadongo/4143, 4145 and 4280. Both agree that the first house should have Kisumu/Kadongo/4143 and 4280, while the second house should take Kisumu/Kadongo/4145.

10. I have noted too that an issue was raised concerning the welfare of one of the children, who is a minor. He is said to be in need of school or college fees. Division of the assets should not prejudice him, for his share should be in his house, and his needs should be met from the share allotted to the house to which he belongs.

11. Kisumu/Kadongo/4150 is in the name of another person. I was told that the parties were in the process of having it transferred to the name of the deceased.

12. After taking everything into account, I shall order distribution of the estate of the deceased in the following terms:-

(a) First house - Kisumu/Kadongo/4040 and 4280, and Plot No. 68 Holo Market;

(b) Second house - Kisumu/Kadongo/3940, 4143 and 4145;

(c) Debts and liabilities – to be settled from the proceeds of sale of LR No. 15428 Nairobi, with the balance of the purchase price being shared between the two houses at the ratio of 5:4;

(d) Upon the transfer of Kisumu/Kadongo/4150 to the name of the deceased, the same shall be sold and the proceeds of sale shared out between the houses at the ratio of 5:4.

(e) Any other assets that have not been distributed above, or have not been identified, shall be sold and the proceeds of sale distributed in the ratio of 5:4 between the first and the second house; and

(f) The property in each house shall devolve to the widows during life interest and shall pass to the children in equal shares thereafter.

13. The grant of letters of administration intestate herein shall be confirmed in those terms, and a certificate in those terms shall issue to the administrators accordingly. There shall be no order on costs. It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 3RD DAY OF FEBRUARY, 2017.

W. MUSYOKA

JUDGE