



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**SUCCESSION CAUSE NO.640 OF 2012**  
**IN THE MATTER OF THE ESTATE OF J M M – DECEASED**

**T N M**

**M W M.....PETITIONERS**

**RULING**

By a summons for confirmation of grant dated 31st March, 2013, T N M and M W M moved this court to have the grant of letter of administration in respect of the estate of J M M (deceased) on the 18th December, 2012 confirmed.

The summons is grounded on the affidavit of T N M and M W M sworn on the 31st March, 2014.

Annexed to the summons is a consent to confirmation of grant (General form) signed by T N M, M W M, J M M, M W M, L K M, T N W , E L L and R W M . The 1st two are the widows of the deceased while the rest are children of the deceased save for R W M who is a niece, E L L (an adopted child) and T N W a grandchild.

J W M, E S M M and E W M (all children of the deceased) did not sign the consent.

J W M and E S M M have opposed the mode of distribution proposed by the administrators of the estate and an affidavit of protest is on record. The administrators have in paragraph 5 of the affidavit in support of the summons for the confirmation of grant proposed the following distribution of shares to the beneficiaries:

i) M W M - PLOT NO.MAU SUMMIT

CENTRE L.R [particulars withheld] - - WHOLE SHARE

ii) T N W – LR [particulars withheld]

– - WHOLE SHARE

iii) J W M – LR[particulars withheld] – - WHOLE SHARE

iv) M W M - LR [particulars withheld] – - WHOLE SHARE

- v) E W M - LR [particulars withheld] – - WHOLE SHARE
- vi) E S M M - LR [particulars withheld] – - WHOLE SHARE
- vii) L K M - LR [particulars withheld] – - WHOLE SHARE
- viii) T N M - LR [particulars withheld] – - WHOLE SHARE
- ix) M W M - LR [particulars withheld] – - WHOLE SHARE
- x) T N M and M W M - LR [particulars withheld] - EQUAL SHARES
- ix) E L L - LR [particulars withheld] - WHOLE SHARE
- xii) L K M -LR [particulars withheld] - WHOLE SHARE
- xiii) T N M - LR[particulars withheld] - WHOLE SHARE
- xiv) T N M, M W M LR [particulars withheld]
- J M M - EQUAL SHARE
- xv) E W M - LR [particulars withheld] - WHOLE SHARE
- xvi) M W M- NKU MUNICIPALITY BLK.[particulars withheld] - WHOLE SHARE
- xvii) M W M and T N M - LR [particulars withheld] - EQUAL SHARES
- xviii) LR[particulars withheld] -
- a) M W M - 1 ACRE
- b) L K M - 1 ACRE
- c) T N M - ½ ACRE
- d) R W M - ½ ACRE
- xix) LR [particulars withheld] -
- a) E WM
- b) J W M
- c) E S M M - EQUAL SHARE
- xx) LR [particulars withheld] - R W M – WHOLE SHARE
- xxi) LR [particulars withheld] - R W M - WHOLE SHARE
- xxii) LR [particulars withheld] – J M M - WHOLE SHARE
- xxiii) LR.[particulars withheld] -T N M - WHOLE SHARE
- xxiv) PLOT [particulars withheld] - M G

TRADING CENTRE - T N M - WHOLE SHARE

xxv) KENYARE SHARES -T N M - WHOLE SHARE

xxvi) KCB SHARES - M W M - WHOLE SHARE

xxvii) UNIVEVER TEA SHARES - T N M - WHOLE SHARE

xxviii)STANDARD CHARTED SHARES – M W M – WHOLE SHARE

xxix) KENGEN SHARES - T N M - WHOLE SHARE

xxx) B.A.T. SHARES - M W M - WHOLE SHARE

xxxi)SARAFICOM SHARES - T N M - WHOLE SHARE

xxxii) MONEY IN CO-OP. BANK - M W M & T N M - EQUAL SHARE

xxxiii) MONEY IN STANDARD CHARTERED

SAFARI SAVINGS - M W M & - T N M - EQUAL SHARE

xxxiv) MONEY IN EQUITY BANK - M W M & - T N M - EQUAL SHARE

In the affidavit of protest, J W M and E S M M have in paragraph 4 thereof proposed the following mode of distribution:

1. PLOT NO.MAU SUMMIT CENTRE LR/[particulars withheld] - MW M - WHOLE SHARE

2. KIAMBOGO/KIAMBOGO BLK [particulars withheld] -T N M and

- M W M - EQUAL SHARE

3. LR BLK [particulars withheld] (MWARIKI) – J W M – WHOLE SHARE

4. LR [particulars withheld] ,( MWARIKI ) - M W M – WHOLE SHARE

5. LR [particulars withheld] (MWARIKI) - E W M M – WHOLE SHARE

6. LR BLK[particulars withheld] (MWARIKI) – E W M – WHOLE SHARE

7. LR[particulars withheld] (MWARIKI) – L K M – WHOLE SHARE

8. LR [particulars withheld] (MWARIKI) –T N M – WHOLE SHARE

9. LR [particulars withheld] (MWARIKI) – J M M – WHOLE SHARE

10.LR [particulars withheld] (MWARIKI) (SOLD) ADMINISTRATORS TO TRANSFER (T N M AND M W M)

11.LR [particulars withheld] (HARAKA) - E L L – WHOLE SHARE

12.LR [particulars withheld] - L K M– WHOLE SHARE

13.LR[particulars withheld] (MWARIKI) – T N M - WHOLE SHARE

14.LR [particulars withheld] (HARAKA) - T N M, M W M AND J M M – EQUAL SHARE

15.LR[particulars withheld] (HARAKA) - E S M M - WHOLE SHARE

16.NKU MUNICIPALITY BLK.[particulars withheld] – E S M M and M W M - (TO HOLD IN TRUST OF THE ESTATE) (REVENUE COLLECTED BE SHARED BY ALL BENEFICIARIES)

17.LR [particulars withheld] (HARAKA) - J M M – WHOLE SHARE

18.LR [particulars withheld] (HARAKA) - E S M M – WHOLE SHARE

19.LR [particulars withheld] (HARAKA) - J W M – WHOLE SHARE

20.LR [particulars withheld] (HARAKA) -

21.(a) M W M – 1 ACRE

(b) L K M – 1 ACRE

(c) T N M – ½ ACRE

(d) R W M – ½ ACRE

22.LR [particulars withheld] (HARAKA) -(a) E W M – 1 ACRE

(b) J W M – 1 ACRE

(c) E S M M – 1 ACRE

23.LR [particulars withheld] (HARAKA) - R W M – WHOLE SHARE

24.LR [particulars withheld] – M W M – WHOLE SHARE

25.LR [particulars withheld] (MWARIKI) – J M M – WHOLE SHARE

26.NKU MUNICIPALITY [particulars withheld] – T N M and J W M - (TO HOLD IN TRUST OF THE ESTATE) (REVENUE COLLECTED BE SHARED BY ALL BENEFICIARIES)

27.[particulars withheld] -MBURU GICHUA

TRADING CENTRE – T N M – WHOLE SHARE

28.KENYA RE SHARES

29.KCB SHARES

30.UNIVEVER TEA SHARES

31.STANDARD CHARTED BANK SHARES

32.KENGEN SHARES

33.B.A.T. SHARES

34.SARAFICOM SHARES

(ALL SHARES TO BE SOLD AND MONEY TO BE SHARED BY ALL BENEFICIARIES)

35.MONEY IN CO-OP. BANK – TO BE SHARED EQUALLY BY ALL THE BENEFICIARIES

36.MONEY IN STANDARD CHARTERED BANK – TO BE SHARED EQUALLY BY ALL THE BENEFICIARIES

37.MONEY IN EQUITY BANK – TO BE SHARED EQUALLY BY ALL THE BENEFICIARIES

In a further affidavit of protest, the two propose in paragraph 4 thereof that shares of 2 other properties be distributed as follows:

[particulars withheld] – T N M – WHOLE SHARE

[particulars withheld] – M W M – WHOLE SHARE

Counsel for the petitioners did file brief submissions.

I have had occasion to consider the summons for confirmation of grant, the supporting affidavit by the two (2) petitioners and the consent signed by some of the beneficiaries.

I have considered the affidavit of protest and the further affidavit of protest and the mode of distribution proposed thereon.

Of determination is the mode of distribution of the estate herein amongst the beneficiaries the assets and beneficiaries having been ascertained.

The **Law of Succession Act (Cap 160 Laws of Kenya)** and specifically under **Section 27** thereof donates complete discretion to the court to order specific share of the estate to be given to each dependant or to

make such other provision for him by way of periodical payments or a lump sum and to impose such conditions as it deems fit.

As held in the decision in Mary Rono V. Jane Rono & Another, Civil Appeal No.66 of 2002, the discretion aforesaid, like all discretions exercised by courts, must be made judiciously, that is to say, on sound legal and factual basis. All the while the emphasis ought to be on a fair distribution of the deceased's net estate.

The Administrators herein are the wives to the deceased and mothers to the beneficiaries. I have considered the proposal made by the administrators in respect of the distribution of the capital assets. I have also factored in the distribution proposed by J W M and E S M M. It is manifestly clear from the distribution that the administrators have endeavoured to distribute the estate in so far as the capital assets are concerned equitably.

It is commendable that the two (2) wives of the deceased have come together and agreed on the distribution of the estate to their respective children without acrimony. Indeed, the majority of the beneficiaries agree with them. Of note is that the protestors have been substantially provided for as far as capital assets are concerned.

The protestors have not laid any basis for their proposed mode of distribution. Where their proposal is at variance with that of the administrators, no explanations are given to warrant interference with the distribution as proposed by the administrators. Suffice to state that distribution cannot be guided by the whimsical wishes of a minority beneficiary more so where there is evidence that they have been substantially and equably provided for.

As regards shares and cash in bank forming part of the estate herein, I am persuaded that the administrators ought to have devised a more equitable distribution. I note from the record that there is a minor beneficiary by the name T N M, a granddaughter to the deceased. She would obviously benefit appropriately by having disposable cash available to take care of her schooling needs. That alone, however does not justify having all the cash.. in bank going to the administrators. Tellingly, the amounts in the various accounts named are not indicated. No proper justification is given by the administrators why.

The protestors propose that all the shares be sold and proceeds be shared equally among all the beneficiaries. This is an equitable proposal.

Consequently, this court proceeds to confirm the grant herein on the following terms:

1. That all capital assets be distributed as proposed by the administrators in paragraph 5 of the affidavit in support of summons for confirmation of grant sworn by T N M and M W M on 31st March, 2014.
2. That all shares as listed in the affidavit aforesaid be sold and proceeds be distributed to all beneficiaries equally. For the purposes of the interests of T N M, she will be considered a unit for the purposes of distribution of the proceeds from the share with her share going to T N M to hold in trust.
3. That all cash in bank be ascertained and same to be distributed as hereunder:
  - i. 40% for the benefit of T N W to be held in trust by T N M
  - ii. 40% to the 2 widows equally
  - iii. 20% to all other beneficiaries equally.

Orders accordingly.

**Dated, Signed and Delivered at Nakuru this 10th day of March, 2016.**

**A. K. NDUNG'U**

**JUDGE**