

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**SUCCESSION CAUSE NO. 53 OF 2003**

**IN THE MATTER OF THE ESTATE OF CRESCENT WERE HEZRON WERE**  
**(DECEASED)**

**RULING**

1. According to the record, what I am tasked with determining are summonses for confirmation. One is dated 13<sup>th</sup> November 2024, and the other 15<sup>th</sup> January 2025. The 2 carry different proposals on distribution. On 22<sup>nd</sup> January 2025, I directed that the one dated 13<sup>th</sup> November 2024 be treated as the main application, and that dated 15<sup>th</sup> January 2025 as the protest to it.
2. The application, dated 13<sup>th</sup> November 2024, is by Moses Tommy Were, one of the administrators. He has identified the survivors of the deceased, as 2 widows and 14 children. He has also identified the parcels of land, that the deceased died possessed of, as 8. Some are in the name of the deceased, some are not, for they were allegedly sold by one of the widows, Mary Musiko Were. He has indicated the ones that are occupied, and by who. He has also indicated the ones that were allegedly sold by Mary Musiko Were, and to who, inclusive of disclosing whether they have since been transferred to the names of the alleged buyers. He has proposed distribution of the assets that are in the name of the deceased to the various survivors of the deceased and the persons beneficially entitled. He has listed the assets allegedly sold by Mary Musiko Were, and has proposed distribution to her, of some of these assets, based on valuation. What Mary Musiko Were sold is what is allocated to her.
3. The application, dated 15<sup>th</sup> January 2025, was filed by Anna Minyisia Were, the other administratrix. This is what is treated as the protest. The protestor does not list the survivors of the deceased and the persons beneficially entitled to a share in the assets, but she has listed 7 assets, as what comprises the estate, and what I should be considering for distribution.
4. The 2 applications were canvassed by *viva voce* evidence. The 2 administrators, Moses Tommy Were and Anna Minyisia Were,

testified. Both breathed life into their respective filings. At the close of the oral hearings, both sides filed written submissions, which I have read and noted the arguments made.

5. The deceased died intestate, on 18<sup>th</sup> September 2000, long after the Law of Succession Act, Cap 160, Laws of Kenya, had come into operation, on 1<sup>st</sup> July 1981. The law to apply, to the distribution of the estate herein, therefore, is Part V of the Law of Succession Act. Confirmation is required by sections 55 and 71 of the Law of Succession Act, to facilitate distribution of the capital assets. The proviso to section 71(2) of the Law of Succession Act and Rule 40(4) of the Probate and Administration Rules require that the persons beneficially entitled be identified or ascertained, and so should the shares due to them.
6. The application, dated 13<sup>th</sup> November 2024, identifies the persons who have survived the deceased, or are beneficially entitled to shares in the estate. The application, dated 15<sup>th</sup> January 2025, does not identify the survivors or persons beneficially entitled, and I suppose that the protestor is in agreement with Moses Tommy Were, on the survivors, who are the widows and children of the deceased. Both sides have also ascertained the shares to be allocated, out of the assets of the estate, to the survivors and beneficiaries ascertained. All the widows and the children are catered for, in both applications and proposals.
7. The difference, in the 2 proposals, is around the assets that were allegedly sold by Mary Musiko Were. I have seen certificates of official searches, which disclose those sales. Whereas Moses Tommy Were has addressed the issue, the protestor does not. Moses Tommy Were deals with it, by way of proposing that Mary Musiko Were be allocated the assets that she allegedly sold, so that they reflect what she benefitted from, out of the estate. Out of the 2 sets of proposals, I find those in the application, dated 13<sup>th</sup> November 2024, more plausible and reasonable.
8. Consequently, I shall confirm the grant herein, in the terms of the application, dated 13<sup>th</sup> November 2024. The estate herein shall be distributed as per the proposals in that application. A certificate of confirmation of grant shall issue, accordingly. The administrators shall transmit the estate, within 6 months, as required by the law.

The matter shall be mentioned on 24<sup>th</sup> September 2026, to confirm completion of transmission and administration. Each party shall bear its own costs. Leave is hereby granted, to whoever may be aggrieved, by these orders, to challenge them, at the Court of Appeal.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS, AT  
BUSIA, THIS 16<sup>TH</sup> DAY OF FEBRUARY 2026.**

**W MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Ms. Nancy Mukoya Were, the 1<sup>st</sup> administratrix/protestor, in person.**

**Advocates**

**Ms. Achala, instructed by Abalo & Company, Advocates for Mr. Moses  
Tommy Were, the 2<sup>nd</sup> administrator/applicant**