IN THE COURT OF APPEAL

AT NAKURU

(CORAM: KOOME, MUSINGA & MURGOR, JJ.A.)

CIVIL APPEAL NO. 65 OF 2017

BETWEEN

BADRUDIN HUSSEIN HAJI ISSA.....APPELLANT

AND

ABDUL AZIM KASSAM.....RESPONDENT

(Being an Appeal from the decision of the High Court at Naivasha

***(Meoli, J.) dated 25th November, 2016* in Succession Cause No. 444 of 2010**

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CONSOLIDATED WITH

CIVIL APPEAL NO. 90 OF 2017

BETWEEN

BADRUDIN HUSSEIN HAJI ISSA.....APPELLANT

AND

TOYO MOYO CO LTD.....1ST RESPONDENT

ABDUL AZIM KASSAM *(sued as .the*

legal representative of the estate of the late

HUSSEIN HAJI ISSA.....2ND RESPONDENT

MUMTAZ ANWARALY.....3RD RESPONDENT

ABDOULGANI *KASSAM (sued as the*

***legal representative of the estate* of the late**

KASSIM ISMAIL ANWARALI.....4th RESPONDENT

(Being an Appeal from the Ruling and decree of the

***High Court Nakuru (Meoli, J.,) dated 1st July, 2016* in**

Civil Suit No 1 of 2016 *CONSOLIDATED WITH* Civil Suit No 2 of 2016)

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JUDGMENT OF THE COURT

[1] On 29th July, 2020, this Court ordered Civil Appeals Nos. 65 of 2017 and No. 90 of 2017 be consolidated and heard together. In both appeals, ***Badrudin Hussein Haji Issa*** is the appellant. The two appeals are somehow related as they revolve around issues to do with the estate of the late ***Hussein Haji Issa*** (the deceased) who died on 4th May, 2004 in Narok. The parties are also beneficiaries of the deceased's estate, they are family members, save for **Civil Appeal No 90 of 2017** where the 1st respondent was a tenant in one of the deceased's properties.

[2] In **Civil Appeal No. 90 of 2017** the appellant sought leave to be added as a party in **Narok Civil Case No. 1 of 2016** which was formerly **Naivasha HCCC No. 10 of 2015** and **Nakuru HCCC No. 204 of 2009**. The suit touched on a dispute involving Toyo Moyo Co. Ltd (1st respondent) who were the plaintiff and tenants in the deceased's property. The dispute was over the attachment of goods in Plot No. 10 Narok Town (registered in the name of the deceased) which were attached by auctioneers and the 1st respondents' claim was for damages. The said attachment occurred at a point in time when the appellant was an administrator of the deceased's estate.

[3] The grant of letters of administration that had been issued to the appellant was however revoked by the High Court (**Mulwa, J.)** sitting in Nakuru. The appellant was substituted by ***Abdul Azim Kassam,*** a grandson of the deceased who became the administrator of the deceased's estate. The appellant was aggrieved by the said turn of events, and as a result he appears to have filed a flurry of applications, one being an objection to the confirmation of the grant which was dismissed and gave rise to **Civil Case No 65 of 2017.** In another application, the appellant sought to be joined in the Civil Suit so that he could defend his interests as a beneficiary of the deceased estate.

[4] The application for joinder was predicated on the grounds that the appellant was the beneficiary of the deceased's estate and he stood to be prejudiced should the suits be settled by consent as his family was intending to so as to prejudice him; that the suit related to issues that arose during his tenure as an administrator of the estate of the deceased as he claimed to have been the one who gave instructions to the auctioneers to levy distress for rent.

[5] The application for joinder was opposed by the administrator of the deceased's estate with the support of the widow (the appellant's mother) and the daughters of the deceased. Upon considering the matter the learned Judge was not persuaded that the appellant had any identifiable interest in the said suit which was different from what was being defended by the administrators of the deceased's estate. As the appellant had been removed by a court order from administering the deceased's estate, the Judge ruled that allowing him to be joined in the suit would be tantamount to one Judge **(Meoli, J.)** varying the order made by another Judge (**Mulwa, J.)** This is what the learned Judge stated in one of the pertinent paragraphs of the impugned ruling;

> ***"The present defendant as an administrator is duty bound under*** the ***Law of Succession Act to administer the deceased's estate diligently and to give an account thereof to the appointing court. He does not need to be supervised by the applicant (appellant) in that regard. Secondly, if the applicant has in his possession crucial evidence to lead, he can do so effectively without becoming a party. He has already filed a defence in the suits and there is no evidence that he, more than any other persons beneficiary entitled will be prejudiced by being represented by the present defendant.***
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> ***While it is also true that the claims in the two suits are substantial, I cannot see what advantage the inclusion of the applicant***
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> ***(appellant) as a party will add to the defence. It is plain that the applicant has fallen out with the majority of the other beneficiaries including his elderly mother, leading to prolonged litigation in the succession proceedings. Allowing the acrimony flowing from the succession cause in to the instant suits can only serve to delay the matters or the obfuscation of the real issues.***
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> ***In my considered view, what the applicant (appellant) by the present application is seeking, is another bite at the cherry; the variation of the order of Mulwa J dated 10th December, 2014. Equally, if granted, the orders sought will qualify if not nullify the effect of appointment of the present administrator in the succession cause at least regarding the property herein. The court would be loath to allow contestation in a succession cause to be introduced via proxy in separate and unrelated suits…"***

[6] That being the gist of the said ruling, the appellant faults the learned Judge for failing to consider the weight of the evidence that was tendered in court; for finding that the involvement of the appellant in the said suits would not have added any value; for finding that the interests of the appellant were sufficiently represented by the administrators of the deceased estate despite the apparent conflicts between the beneficiaries and for denying the appellant justice. The appellant therefore urged us to allow the appeal and add him as a party to Civil **Suit No. 1 of 2016** as consolidated with **Civil Suit No 2 of 2016**.

[7] In further submissions in support of the appeal, it was the appellant's counsel's submission that the appellant had demonstrated sufficient interests to be joined in the suit as an interested party. He was the administrator of the deceased's estate when the claim sought in the suit arose; the claim was for a colossal sum of money and he had crucial evidence to adduce during the hearing; that the learned trial Judge having stated that the appellant was at logger heads with the rest of the family, that constituted sufficient reason for the appellant to be joined in the suit so that he could represent his own interests as the beneficiary of the deceased's estate in his own right and that the respondents

could not possibly act in his best interest as there was strife in the family and the outcome of the said suit would affect the appellant. Counsel urged us to allow the appeal as the appellant was denied a right to a hearing.

[8] In **Civil appeal No. 90 of 2017** the issue for determination was the distribution of the estate of the deceased in a Succession Cause that equally made some movements between the High Court at Nairobi and Nakuru before it landed in the High Court at Naivasha and it fell for hearing before **Meoli, J.** The deceased died leaving three properties: -

1. Commercial plot No 207 (plot No. 10) Narok Township.

2. Commercial plot No. 11 Narok Township.

3. Residential Plot No. 48 Narok.

It appears from the record that the deceased was survived by his widow, four daughters and the appellant who appears to be the only son. The appellant was the objector while the grandson of the deceased backed by the widow of the deceased were the petitioners. Upon hearing the dispute which basically placed the widow of the deceased and the daughters on one side against the appellant, the core issue was the mode of distribution and the applicable law.

[9] The learned Judge analyzed the evidence and found, *inter alia*, that the parties were the ones who chose to file the succession cause before the High Court instead of the Kadhi's court; in any case the jurisdiction of the Kadhi's court would have been limited to determine the shares of each beneficiary. This was also subject to all the parties agreeing to subject themselves to that jurisdiction. The Judge ruled that all the parties submitted to the jurisdiction of the High Court and there was no justification for the appellant to turn around during cross examination and ask the court to refer the matter to the Kadhi's court when he had willingly withdrawn an application he had filed seeking for the said orders.

[10] On who had the priority to administer the estate, the Judge found the widow of the deceased had priority by virtue of the provisions of ***Section 66*** of the Law of Succession Act and therefore dismissed the objection. On distribution of the estate, this is what the Judge stated in pertinent paragraphs of the impugned ruling:-

> ***"In my view, as a spouse to the deceased, the widow contributed to the acquisition of the property, even if in kind, and is entitled to commensurate share thereto. Certainly, the widow is entitled to the matrimonial home situate on plot 48 and this court cannot force her to share the matrimonial house with an adult daughter. Equally, the relationship between the widow and the objector appears broken down and it may not (sic) aught well to have them reside on the same location***
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> ***In the circumstances, I will order that the widow is entitled to the matrimonial house and the approximate piece of land upon which it stands while Naseem Hussein Haji will take the adjacent 5-roomed guest house and the approximate plot upon which it stands, and that the respective dimensions of the land parcels will be agreed between two beneficiaries. Hence, the two beneficiaries will share Plot No 48.***
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> ***As regards Plot No. 11, which has already acquired a liability in excess of Sh.s 14 Million, the same is to be shared equally by Khatija Hussein Haji Issa, Naseem Hussein Issa, Mumtaz Anwar, Rukshana Salim and Nimmi Sharif. The objector (appellant) will take absolutely the plot No. 10 which operates as a garage.***
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> ***In view of the foregoing, the court finds no merit in the objection and will proceed to confirm the grant in the name of the present administrator against whom no adverse findings have been made, the widow of the deceased, Khatija Hussein Haji and the daughter Naseem Hussein Haji. Because of the polarized state of relations between the objector and the rest of his family, and his family, and his past conduct as reflected in the concluded suits against the estates namely Narok High Court Sub-registry Civil Suit No 01 and 02 of 2016 it is my considered view that it may be inimical to the administration of the estate to include him as an administrator. However, should the three administrators not act in accordance with the grant confirmed in their names, the objector and any other beneficiary will be at liberty to apply to this court. Parties to bear their own costs"***

[11] Aggrieved by the above outcome, the appellant raised some twelve (12) grounds of appeal which can be summarized as; the learned judge erred in the appreciation of facts and law; in failing to find that Islamic Law of Succession was applicable in the distribution of the deceased's estate; failing to find there was a Will and thereby distributing the estate intestacy; failing to order a valuation of the assets forming part of the deceased's estate; failing to order an account of the income from the estate by the respondents for the past 6 years; for allocating the appellant, who was the only son of the deceased, a disproportionately low asset in terms of value, and for generally depriving the appellant his right to his home which was allocated to the deceased's unmarried daughter. The appellant prayed that the appeal be allowed by setting aside the impugned ruling on the basis of there having been no Will that was propounded.

[12] Counsel for the appellant also filed very detailed written submissions to expound on the aforesaid grounds of appeal. It was submitted that the Judge did not interrogate the Will which was propounded as the basis for the revocation of the grant that had been issued to the appellant on 27th October, 2008; that had that been done, it would have transpired that the said Will was a forgery. For failing to address the issue of the validity of the Will, it was counsel's view that the appeal should succeed and in that regard the case of **Samuel Kiplagat Biwot Kendagor vs Grace Wangoi Njogu & 7 others [2019] eKLR** was cited. Moreover, the distribution of the deceased's estate should have been done according to Islamic law as the appellant had adduced sufficient evidence to demonstrate that the deceased and all the parties professed Islamic faith.

[13] Further, counsel for the appellant maintained that it was clear all the parties bore Muslim names and the appellant had adduced evidence by showing an image of the deceased being buried at a Muslim cemetery. Counsel further submitted that even if the Succession Cause was filed in the High Court, as none of the parties objected to the application of the Islamic law, by dint of the ratio in the case of **Noorbena Abdul Razak vs AbdulKadhir Ismail Osman**, **Mombasa Civil Appeal Case No. 285 of 2009**, and ***Section 2 (3)*** of the Law of Succession Act, the Judge was obliged to apply the Islamic law to inform the distribution of the deceased's estate. Under the Islamic law, it is only 1/3 of the deceased's estate which could be disposed under a Will; that the 2/3 was to be distributed to the beneficiaries and the appellant who was a son was entitled to a larger share than his sisters. Thus, counsel for the appellant invited us to hold that the Judge lacked jurisdiction to distribute the deceased's estate other than in accordance with the Islamic rules and invited us to hold the impugned ruling was irregular null and void.

[14] On the part of the respondents, the appeal was opposed. Counsel for the respondents also filed written submissions where he cited the provisions of ***Section 5*** of the Kadhi's Court Act which gives the Kadhi's court jurisdiction to determine the equation of Muslim law relating to personal status, marriage, divorce or inheritance in the proceedings in which all the parties profess Muslim religion but nothing limits the jurisdiction of the High Court or any Subordinate court in any proceeding which comes before the court. Counsel pointed out that the Succession Cause was filed before the High Court and although the appellant had filed an application seeking to transfer the matter to the Kadhi's court, he withdrew that application to pave way for the hearing of the application for confirmation of the grant and that the appellant did not propose that the deceased's estate be shared according to the Islamic law and contrary to the submissions by his counsel in this appeal, he urged the property be shared equally among the beneficiaries.

[15] Responding to the issue of the Will, counsel for the respondent submitted that, the application for confirmation did not follow the contents of the WILL as both parties had given a proposed mode of distribution, the matter proceeded as an intestate estate and so was the final grant that was issued. The Judge rightly found the question of the Will was rendered irrelevant as parties gave evidence of their proposed modes of distribution. On the issue of valuation, the respondent had provided the value of the estate as Ksh. 90,000,000 and if the appellant was of a different opinion, it was incumbent on him to provide another valuation.

[16] On the distribution of the estate, counsel for the respondent was of the view that the Judge properly exercised her discretion considering the prevailing circumstances. That the widow of the deceased was elderly, and she had also contributed either directly or indirectly to the acquisition of the properties with the deceased, so she was entitled to be awarded the matrimonial home. The unmarried daughter was awarded an adjacent guest house and the plot upon which it stood, while the appellant was awarded a commercial plot by himself and that the appointed administrator distributed the estate by transmitting the title to the respective beneficiaries and in his view the appeal is overtaken by events. Counsel for the respondents urged us to dismiss the appeal.

[17] This appeal was heard virtually vide GOTOMEETING Platform pursuant to the Court of Appeal Practice Directions to mitigate the spread of COVID -19 Pandemic. We have considered and deliberated on the submissions, the record of appeal and the law as demonstrated in the above summary of the salient matters that were raised. This being a first appeal, are required under the provisions of ***Rule 29 (1) (a)*** of the Court of Appeal Rules to do so. We take further guidance on the precise nature of our mandate from the case of **Sumaria&Another vs. Allied Industries Ltd ([2007]) KLR 1** where this Court expressed itself as follows: -

> **"Being a first appeal the court was obliged to consider the evidence, re-evaluate it and make its own conclusion bearing in mind that a court of appeal would not normally interfere with a finding of fact by the trial court unless it was based on misapprehension of the evidence or that the Judge was shown demonstrably to have acted on a wrong principle in reaching the finding he did".**

[18] That said, we discern four issues that stand out for determination in both matters. As far as **Civil Appeal No. 65 of 2017** is concerned, the issue is one; that is, whether the Judge erred by declining to join the appellant in the suit. In regard to **Civil Appeal No. 90 of 2017**, it is whether the Judge should have applied Islamic law to guide the distribution of the deceased's estate; whether she erred by not considering the Will that was propounded by the widow and whether the shares allocated to the beneficiaries, especially the appellant, was not fair, he being the only son of the deceased.

[19] On the first issue of whether the appellant should have been joined in the suit, we wish to refer to the principles that were set out by the Supreme Court in the case of **Communications Commission Of Kenya & 4 Others vs. Royal Media Services Limited & 7 Others Petition No. 15 OF 2014** on the issue of joinder of parties to a suit. The Supreme Court pronounced itself on who is an interested party as follows:

> "**In determining whether the applicant should be admitted into these proceedings as an interested party we are guided by this Courts decision in the Mumo Matemo case where the court** (at paragraphs 14 and 18) **held:**
>
> "**An interested party is one who has a stake in the proceedings, though he or she was not party to the cause** ab initio. **He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of Meme v. Republic, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:**
>
> ***(i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;***
>
> ***(ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law***;

(iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

a) what is the intended party's state and relevance in the proceedings and

b) will the intended interested party suffer any prejudice if denied joinder.?"

[20] The suit in which the appellant wanted to join was specifically against the administrator of the deceased's estate. The appellant said he wanted to join the suit in his capacity as the beneficiary of the estate; that he had crucial evidence to adduce in the case as the claim arose when he was the administrator of the estate; that there was strife between him and the administrator of the estate and to avert a possible waste of the estate; that the administrator of the estate entered into a consent to settle a claim of Ksh. 14 million which would affect him as a beneficiary and finally, he had a constitutional right to be heard. The learned trial Judge considered all the above and was not persuaded that the appellant was a necessary party and therefore declined to allow the application. The question is whether the Judge erroneously or unreasonably declined to exercise judicial discretion in favor of the appellant.

[21] This is our view of the matter. It is obvious that the appellant was seeking to be joined in those proceedings as a defendant which would fall within the provisions of ***Order 1 Rule 3*** of the **Civil Procedure Rules** which provides: -

"All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise."

The claim in the suit was directed to the estate of the deceased by the respondents, and if the appellant had crucial evidence he should have adduced that evidence as a witness and not as a party. The fact that the appellant was not joined as a party in the suit did not amount to denial of a fair hearing as he was not named as a party.

[22] We also wish to point out that Succession proceedings are *sui generis* in nature. All the proceedings are governed by the Law of Succession Act except as provided under Rule 63 which provides:

Rule **63 (1)** of the Probate and Administration Rules provides that: -

"Save as in the Act or in these Rules otherwise provided, and subject to any order of the court or a registrar in any particular case for reasons to be recorded, the following provisions of the Civil Procedure Rules, namely Orders V, X, X1, XV, XV111, XXV, XL1V, and XL1X, together with the High Court (Practice and Procedure) Rules, shall apply so far as relevant to proceedings under these Rules."

It is the administrator of the estate who has the authority to represent all the beneficiaries as far as the estate of the deceased is concerned, be it against suits, waste or meddling. The appellant's argument was that he had a rift with the administrator and other beneficiaries. We agree with the trial Judge's reasoning that if beneficiaries are allowed to be joined as parties whenever there were disagreements with the administrators that would proliferate and complicate the administration of an estate.

[23] That if a beneficiary who disagrees with the administrator is allowed to take over the role of defending a suit against the deceased's estate alongside the administrator, the whole situation would also lead to confusion. The law of Succession is clear on what a beneficiary can do to seek remedies if there is meddling, waste or breach of trust by the administrator. The law provides for remedies to an aggrieved party. In view of the foregoing, we are satisfied that the learned Judge adopted a wrong or right approach in reaching her conclusion that the appellant was not a necessary party in the suit.

[24] On the succession matter, we will start with the issue of whether the Judge erred by distributing the deceased's estate according the Law of Succession Act? It is common ground that the parties filed the Cause before the High Court; that the appellant filed an application seeking to transfer the Cause to the Kadhi's court but he withdrew that application; that even in his objection and supporting affidavit and by his proposed mode of distribution, he did not propound his view that the distribution of the deceased's estate be done according to Islamic law. ***Section 2***

(1) of the Law of Succession Act declares the Act to constitute the universal law of Kenya in respect of all cases of intestate or testamentary succession to the estate of deceased persons dying after the commencement of the Act and to the administration of their estates. However, ***section 2(3)*** delivers a qualification worded as follows:

"(3) Subject to subsection (4), the provision of this Act shall not apply to testamentary or intestate succession to the estate of any person who at the time of his death is a Muslim to the intent that in lieu of such provisions the devolution of the estate of any such person shall be governed by Muslim law.

(4) Notwithstanding the provisions of subsection (3), the provisions of Part VII relating to the administration of estates shall where they are not inconsistent with those of Muslim law apply in case of every Muslim dying before, on or after the 1st January, 1991."

[25] The parties submitted themselves to the jurisdiction of the High Court notwithstanding the fact that they all professed Islamic faith. We therefore do not agree with the appellant's argument that the court lacked jurisdiction. See also the case of

Saifudean Mohamedali Noorbhai vs. Shehnaz Abdehusein Adamji [2011] eKLR where this Court stated as follows:

> **"Kenyan courts have held in past judgments that every litigant, of whatever religious persuasion, has the option of going directly to the High Court, and a Muslim is not necessarily restricted to the jurisdiction of the Kadhi's court."**
>
> **We fully agree with that holding.**

If the appellant intended to propound, as he is doing in this appeal, that the estate of deceased be distributed according to Islamic law, he should have filed the cause before the Kadhi's court. And even then, all the parties had to agree to submit themselves to that jurisdiction. Moreover, the role of the Kadhi would only have been limited to determination of the equation of shares to each beneficiary. In our view, the appellant raised this issue very late in the day and it is clearly an afterthought as evidenced by the petition and the objection by the appellant which did not contain such a prayer, that the distribution be done according to Islamic Law. This ground of appeal therefore lacks merit and must fail.

[26] Moving to the question of whether the Judge erred by not interrogating the provisions of the Will which the respondent had purported to propound as a basis for the revocation of the grant issued to the appellant, this was a very protracted matter that had been in court for many years, as aptly stated by the learned Judge in the opening paragraphs of the impugned ruling that "**this succession matter has a long and chequered history".** The parties gave *viva voce* evidence regarding the distribution of the estate and the Judge in her determination disregarded the Will. We have perused the contents of the said Will, and in it the deceased had bequeathed his entire estate to his widow. That is perhaps why the widow provided a mode of distribution where each beneficiary was to be allocated their shares.

[27] We therefore think the Judge was justified to disregard the Will as it would not have solved the ranging dispute as the deceased had vested all his properties to the widow. This is what is stated in a pertinent paragraph of the said Will:

> **"The following bequests; to my wife Khatija Hussein Haji Issa my garage plot number10. Commercial plot number 11 and my residential plot number 48 all within Narok town with all equipment on the said plots with stock, goods and furnitures, moveable or immovable or immovable assets. I leave my residuary estate to my wife Khatija, all my shares and interests in all properties of mine in the Republic of Kenya.**
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> **I bequeath and leave my personal belongings, effects and any other properties, including accounts, profits, income from any of my businesses and rent received from the said lands to my wife Khatidja Hussein Haji Issa. Dated this 15th August 2003."**

The Judge clearly followed the weight of evidence to determine the mode of distribution.

[28] We are also persuaded that the law as provided under ***Section 47*** of the Law of Succession Act gave the learned Judge power to entertain any application and determine any dispute under the Law of Succession Act and pronounce such decrees and make such orders therein as may be expedient. Further, under ***Rule 73*** of the Probate and Administration Rules it is provided: -

> **"73. Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.**

In this regard, the Judge decided to settle the core dispute so as to issue a confirmed grant and a decree which entailed the distribution of the estate of the deceased's estate once and for all, and for this we are not convinced there is an error in the said ruling.

[29] This now takes us to the last issues which are interrelated. That is the allegation that the appellant did not receive a fair share of his father's estate; that he ought to have been made the administrator of the estate as the deceased's only son; and a valuation of the estate ought to have been ordered before distribution. On this, the learned Judge gave sufficient reasons to demonstrate why the widow of the deceased had priority to be appointed the administrator of the deceased's estate. Her reasoning was predicated on the provisions of ***Section 66*** of the Law of Succession Act which she quoted verbatim. Besides, the widow of the deceased was advanced in age, there was disagreement between her and the appellant and therefore the appellant was not awarded the family home. If the appellant was fighting with his mother, it is common sense the two could not live under the same roof.

[30] The appellant argues strongly that being the only son of the deceased he was entitled to a larger share than his sisters. We cannot fault the Judge on the exercise of her discretion in determining the distribution because she gave reasons which are backed by the law. The Law of Succession Act does not distinguish the children of the deceased on the basis of gender or their marital status. On the issue of valuation, it is apparent the respondent had put the value of the estate at Kshs. 90 million. Therefore, the burden fell on the appellant to disprove that value by adducing his own evidence of a contrary value, which he did not do. This is in accordance with the cardinal rule of evidence that " **he who alleges has the burden of proof."**

[31] For the aforesaid reasons, we find both appeals completely devoid of any merit and hereby dismiss them with costs to the respondents.

Dated and delivered at Nairobi this 19th day of February, 2021.

M. K. KOOME

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JUDGE OF APPEAL

D. K. MUSINGA

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR