



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of Waweru Kerore alias Waweru Ole Kerore (Deceased) (Succession Cause 28 of 2019) [2024] KEHC 4616 (KLR) (30 April 2024) (Judgment)

Neutral citation: [2024] KEHC 4616 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
SUCCESSION CAUSE 28 OF 2019**

F GIKONYO, J

APRIL 30, 2024

**IN THE MATTER OF THE ESTATE OF WAWERU
KERORE ALIAS WAWERU OLE KERORE (DECEASED)**

SINTAMEI KERORE.....1ST PETITIONER/APPLICANT

PETER KERORE.....2ND PETITIONER/APPLICANT

JUDGMENT

1. Before this court for determination is Summons for Confirmation of Grant dated 02/05/2023.
2. Sintamei Kerore and Peter Kerore, the administrators of the estate of the deceased filed summons for confirmation of grant seeking to have the grant of letters of administration issued to Sintamei Kerore and Peter Kerore on 15th March 2023 be confirmed.
3. They filed an affidavit in support of the Summons for confirmation of grant and stated that the deceased died intestate and left the following dependants;
 - i. Sintamei Kerore (son)
 - ii. Peter Kerore(son)
 - iii. Estate of John Kerore(son)
 - iv. Mary Malobn Nyonyo(deceased) survived by Lornah Nasiae Nyonyo
 - v. Mirishoi Rambei(daughter)
 - vi. Samson Sairo Kerore (Deceased) survive by Leah N. Sairo
 - vii. Elizabeth Ene Suntai
 - viii. Pauline Shenia Muniu (deceased) survived by John Putita Muniyo)
 - ix. Kironua Parsaloi (daughter)



- x. Silantoi Karbuali Koisaba(son)
4. They aver that the deceased was the sole owner and proprietor of the land parcel numbers Cis Mara/ Nairegia /Enkare /9, Cis-Mara/N/Enkare/1594 and Cis-Mara/N/Enkare/1595.

Background of the cause

5. Waweru Kerore died intestate on 10/05/2001. The deceased was a farmer in Narok. He had married two wives who were all deceased. He was a father of 11 children of which 4 are deceased—the remaining 7 children (4 daughters and 3 sons).
6. In probate and administration cause No 33 of 2018, the chief magistrate court in Narok granted letters of administration for 4 children, and grant was confirmed.
7. This court on 17/11/2020 revoked the grant issued by the chief magistrate court on 05/08/2014.

Directions of the court

8. The parties canvassed summons for confirmation of grant by way of written submissions. The 1st petitioner/applicant has filed. The 2nd petitioner/applicant also filed.

The 1st petitioner/applicant's submissions.

9. The 1st petitioner/applicant urged this court to consider both customary and statutory laws on succession and distribute the deceased's properties as per the two houses in equal shares of 50/50 after which the administrators distribute to each member of the house according to their share. The 1st petitioner/applicant relied on In Law Reports /2005/Volume 1/*Rono v Rono and another* [2005] 1EA 363/(CAK)/373 of [2005] 1EA 363 (CAK), Sections 27,28, 40(1) and (2) of the *Law of Succession Act*.

The 2nd Petitioner's submissions

10. The 2nd petitioner does not agree with the mode of distribution proposed by the 1st petitioner on the sole reason that proposal is most unfair and singularly selfish, for the estate comprises two houses; the 1st house has only one child whilst the 2nd has 9 children. The 2nd petitioner proposes the estate to be distributed in accordance with section 40 of the *Law of Succession Act*. They cited case law to support their position including *Esther Wanjiku Burugu v Margaret Wairimu Burugu* Civil Appeal No 319 of 2002 and *Rono v Rono*.

Analysis And Determination

11. As the deceased died in 2001, after the *Law of Succession Act*, cap 160, Laws of Kenya, had come into force in 1981, the applicable law on distribution of the estate as per section 2(1), is the *Law of Succession Act*.
12. The 1st petitioner has made his proposal and made references to customs.
13. The 2nd petitioner has fastened a quarrel on the proposed mode of distribution terming it most unfair and singularly selfish.
14. There is no consensus on distribution. Therefore, the court will consider the two proposals and determine the manner the estate will be distributed in accordance with the law.
15. See the Court of Appeal in *Justus Thiora Kiugu, & 4 others v Joyce Nkatha Kiugu & another* [2015] eKLR (Visram, Koome, and Otieno-Odek JJA), that where the parties filed consents on distribution,



the court would have no reason not to endorse the distribution proposed, so long as the same had the concurrence of all the persons beneficially entitled, even if the proposed distribution departed from what the law provided on distribution. However, where there is no consensus, the court strictly applies the law.

16. The deceased herein died intestate. The estate has two houses. Section 40 of the [Law of Succession Act](#) applies in this matter, and which provides that: -

“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the next intestate estate shall in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”

17. The 1st petitioner has proposed that the property be divided as per the two houses in equal share of 50/50 after which the administrators distribute to each member of the house according to their share.

18. The case of [Rono v Rono and another](#) [2005]1EA 363/(CAK)/373 of [2005] 1EA 363 (CAK) which has been cited by both parties explained section 40 of the [Law of Succession Act](#) and the application of the principle of equality in distribution of estates of deceased persons. Some courts read the decision to vouch for equitable distribution as opposed to strict equality in shares. In the opinion of this court, the principle of equality in distribution subsumes equitable distribution of the estate of the deceased depending on the circumstances of the case. The section also talks of children of the deceased which in a way embodies the principle of non-discrimination.

19. Be that as it may, these principles are no longer left to statutory interpretation, but are express imperatives of the [Constitution](#) fully entrenched in article 27- the principles of non-discrimination, equality and protection before, and equal benefit of the law to all persons. These constitutional imperatives guide the [Law of Succession Act](#); in the identification of beneficiaries and distribution of the estate thereof.

20. Three properties have been listed for distribution that is Cis-Mara/Nairegia Enkare/ 1595, Cis-Mara/Nairegia Enkare/1594, and Cis-Mara/Nairegia Enkare/9.

21. Accordingly, these properties be divided among the houses according to the number of children in each house. Put differently, as there are no special factors, the estate shall be shared equally amongst the beneficiaries listed below: -

- a. Sintamei Kerore (son)
- b. Peter Kerore(son)
- c. Estate of John Kerore(son)
- d. Mary Malobn Nyonyo(deceased) survived by Lornah Nasiae Nyonyo
- e. Mirishoi Rambei(daughter)
- f. Samson Sairo Kerore (Deceased) survive by Leah N. Sairo
- g. Elizabeth Ene Suntai
- h. Pauline Shenia Muniu (deceased) survived by John Putita Muniyo
- i. Kironua Parsaloi (daughter)



- j. Silantoi Karbuali Koisaba(son)
22. The share of the children of the deceased who are deceased will be taken by all the spouse and the children of the deceased child in equal shares under the doctrine of representation.
23. As this is a case involving members of one family, each party shall bear its own costs.
24. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 30TH DAY OF APRIL, 2024.

HON. F. GIKONYO M.

JUDGE

In the Presence of:

Kelele for 2nd Petitioner – Present

Kiptoo for 1st Petitioner – Present

Mr. Otolu – C/A

