



**JUDICIARY  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PROBATE CAUSE NO. 377 OF 2018**

**IN THE ESTATE OF SAMSON MWAKANEMA (DECEASED)**

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**ORDER**

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*Kenyatta Nyirenda, J.*

There is before this Court an application by Winley Msukwa and Peter Mwakanema (Applicants) for a grant of Letters of Administration in respect of the estate of the late Samson Mwakanema (Deceased) who died on 4<sup>th</sup> December 2017.

Letters of administration are granted as prayed for. That said, it is important that the District Commissioner for Karonga must ensure that the estate of Samson Mwakanema is distributed in accordance with the provisions on intestacy in section 17 of the Deceased Estate (Wills, Inheritance and Protection) Act.

The Court is obliged to issue the said direction because one of the documents in support of the application, that is, a letter by Karonga District Council Reference No. KADC/1/15/5 dated 10<sup>th</sup> May 2018 [hereinafter referred to as "List of beneficiaries"] proposes that the Estate should be distributed as follows:

<u>Name</u>	<u>Relationship</u>	<u>Age</u>	<u>%</u>
Peter Mwakanema	Son	Adult	18
Mavuto Mwakanema	Son	Adult	8
Austine Mwakanema	Son	Adult	8
Owen Mwakanema	Son	Adult	8
Christopher Mwakanema	Son	Adult	8
Nellie Mwakanema	Daughter	Adult	8
Suten Mwakanema	Son	Adult	8
Victor Mwakanema	Son	Adult	8
Joyce Mwakanema	Daughter	Adult	8
Winley Msukwa	Son	Adult	18

All the beneficiaries are adults. No reasons have been given why Peter Mwakanema and Winley Msukwa are to get more than the other beneficiaries. In this regard, the proposed distribution of the Estate runs afoul of section 17 of the Act.

Section 17 of the Act provides, among other matters, that in the absence of special circumstances, the surviving spouse(s) and child (ren) are entitled to equal shares.

When it comes to children of the intestate, the age of each child has to be taken into account with the younger child being entitled to a greater share of the property than the older child unless the interests of the children require otherwise: see **In the Matter of the Estate of Charles Enos Chinkwende (Deceased), HC/PR Probate Cause No. 3757 of 2016 (unreported)**. Of course, such a consideration can only be taken into account where the respective ages of the beneficiaries are known. Unfortunately, that is not the case in the present matter.

I direct the Administrator to take note of the cited authority and act accordingly. It is of cardinal importance that the Estate should be administered (including its distribution) in terms of the Act. As a matter of fact, this requirement applies with equal force to the administration of any estate falling within the ambit of the Act.

Pronounced in Chambers this 3<sup>rd</sup> day of July 2018 at Blantyre in the Republic of Malawi.



**Kenyatta Nyirenda**  
**JUDGE**