



REPUBLIC OF KENYA



**In re Estate of Vincent Barasa Nalianya (Deceased) (Succession Cause  
149 of 2009) [2024] KEHC 11493 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11493 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 149 OF 2009**

**DK KEMEL, J**

**SEPTEMBER 30, 2024**

**IN THE MATTER OF THE ESTATE OF VINCENT BARASA NALIANYA (DECEASED)**

**BETWEEN**

**MACLEAN KIBETI BARASA ..... 1<sup>ST</sup> PETITIONER  
PRIDGEON MASAKE BARASA ..... 2<sup>ND</sup> PETITIONER  
SANDYS KHANGATI BARASA ..... 3<sup>RD</sup> PETITIONER  
DOUGLAS MULONGO BARASA ..... 4<sup>TH</sup> PETITIONER**

**AND**

**PRIDGEON MASAKE BARASA ..... 1<sup>ST</sup> OBJECTOR  
EVERLYNE NANGEKHE WANGILA ..... 2<sup>ND</sup> OBJECTOR  
SANDYS KHANGATI BARASA ..... 3<sup>RD</sup> OBJECTOR  
GEOFFREY NALIANYA BARASA ..... 4<sup>TH</sup> OBJECTOR**

**RULING**

1. Vide summons for confirmation of grant dated 31<sup>st</sup> January 2015, the 1<sup>st</sup> and 4<sup>th</sup> Petitioners herein sought orders that the grant made on 15<sup>th</sup> May 2014 be confirmed, costs be in the cause and that the estate of the deceased be distributed as follows:

LR Bokoli/Bokoli/195-dryland



No.	Name	Acreage
	Pridgeon Masake Barasa	6 Acres
	Maclean Kibet Barasa	6 Acres
	Innocent Wangila & Aneriko Wangila Everlyne Wangila	6 Acres
	Sandys Khang'ati Barasa	6 Acres
	Douglas Mulongo Barasa	6 Acres
	Geofrey Nalianya Barasa	6 Acres
	Total	36 Acres

LR Bokoli/Bokoli/195-SWAMP

No.	Name	Acreage
	Pridgeon Masake Barasa	1 Acre
	Maclean Kibet Barasa	1 Acre
	Innocent Wangila & Aneriko Wagila Everlyne Wangila	1 Acre
	Sandys Khang'ati Barasa	1 Acre
	Douglas Mulongo Barasa	1 Acre
	Geofrey Nalianya Barasa	1 Acre
	Total	6 Acres

2. The application was premised on the grounds on the face of the summons and supported by the Petitioners' supporting affidavit dated 31<sup>st</sup> January 2015.
3. Opposing the summons for confirmation of grant, the Objectors herein filed their respective affidavits in protest sworn on 21<sup>st</sup> April 2015 wherein they individually averred that the deceased did not leave only property L.R. Bokoli/Bokoli/195 as alleged by the Petitioners but that the deceased had a plot at Machakha Market measuring 50×100 and pension as he had been a police officer. They contend that they are not privy to any information that the deceased's surviving daughter Margaret Nekesa opted



not to benefit from the estate. They further contend that the proposed mode of distribution by the Petitioners was not approved by all family members.

4. Upon perusal of the Court file, it is noted that Margaret Nekesa Muchemi did file her consent dated 7<sup>th</sup> May 2015, wherein she stated that she had no interest in getting a share from the estate of the deceased as she is settled with her family elsewhere.
5. The Objectors filed their mode of distribution dated 10<sup>th</sup> July 2018 in Court on 11<sup>th</sup> July 2018. They proposed the estate of the deceased be divided as follows:
  - a. L.R. Bokoli/Bokoli/195

No.	Name	Acreage
	Pridgeon Masake Barasa	8 ¼ Acres
	Maclean Kibet Barasa	8 ¼ Acres
	INnocent Wangila & Aneriko Wagila Everlyne Wangila	8 ¼ Acres
	Sandys Khang'ati Barasa	8 ¼ Acres
	Douglas Mulongo Barasa	8 ¼ Acres
	Geofrey Nalianya Barasa	8 ¼ Acres
	Total	49. Acres

- b. L.R. Bokoli/Bokoli/199 measuring 50×100 purchased by the deceased- to be shared equally.
  - c. Pension of the deceased who was a retired police officer -to be shared equally.
7. Vide directions issued on 14<sup>th</sup> June 2022, this Court ordered the County Surveyor Bungoma to visit the land in question, L.R. Bokoli/Bokoli/195, to implement a Court order issued on 24<sup>th</sup> June 2021.
8. Vide a report dated 19<sup>th</sup> July 2022, the County Surveyor Bungoma noted that he visited the land in question, L.R. Bokoli/Bokoli/195, and in the presence of the 1<sup>st</sup> Petitioner herein, the 4<sup>th</sup> Objector and Douglas Mulongo Barasa he conducted the requisite survey where they established that the total actual ground Acreage of the property to be 19.0 HA (47.5 Acres) which was divided into two portions. The 1<sup>st</sup> portion measured 14.50 HA and it was located in the upland area while the 2<sup>nd</sup> portion measures 4.50 HA which was located in the lowland.
9. Vide directions issued on 18<sup>th</sup> May 2024, the parties were to file their respective further affidavits in reaction to the survey report dated 19<sup>th</sup> July 2022.
10. Vide affidavit in protest to the survey report dated 19<sup>th</sup> July 2022, the Objectors averred that they were not notified in time to attend the survey exercise and that it ought to have measured each person's actual ground occupation to help with the confirmation process and that was what their late father distributed to them. They contended that the grant be confirmed according to the area given by the



- deceased on the dry (upland) area while the swampy area to be shared equally. They also proposed that the one plot at Machakha market be sold and proceeds shared equally. Finally, they proposed that the 1<sup>st</sup> and 4<sup>th</sup> petitioners be ordered to account for the deceased's pension which they received for five years.
11. The summons for confirmation of grant dated 31<sup>st</sup> January 2015 and the affidavits in Protest were to be canvassed via written submissions. The parties duly complied.
  12. I have carefully considered the application, the affidavits tendered by the parties herein, and their rival submissions. I find the main issue for determination is whether this Court can issue the orders sought.
  13. The deceased died in 2000, after the Law of Succession Act, cap 160, Laws of Kenya, had come into force in 1981. By dint of Section 2(1), the law to apply to the distribution of the estate is the Law of Succession Act. For avoidance of doubt, section 2(1) of the Law of Succession Act provides as follows; -
 

“ Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after, the commencement of this Act and to the administration of estates of those persons.”
  14. As per the petitioning documents, the property comprising the estate of the deceased was LR. No. Bokoli/Bokoli/195 and according to Pridgeon Barasa Masake's statement, the deceased was survived by: Geoffrey N. Barasa, Grace Muthuiembo Barasa (deceased), Pridgeon M. Barasa, Maclean K. Barasa, Leonard Wangila Barasa (deceased), Sandys K. Barasa, Metrine Mukhwana Barasa (deceased), Margret Mukhwana Barasa and Douglas M. Barasa.
  15. The Court upon the application for confirmation of grant being made may confirm the grant or, if not satisfied that the applicant will properly administer the estate issue a confirmed grant to another person or persons or order the postponement of the confirmation. Section 71(2)(a) of the Act and the proviso to subsection (2) state as follows: -
 

“

“(2) The court to which application is made, or to which any dispute in respect thereof is referred, may –

(a) If it is satisfied that the grant was rightly made to the applicant, and that he is administering, and will administer, the estate according to law, confirm the grant; or...

Provided that, in cases of intestacy, the grant of letters of administration shall not be confirmed until the court is satisfied as to the respective identities of the all persons beneficially entitled: and when confirmed the grant shall specify all such persons and their respective shares.”
  16. After a thorough perusal of both parties' proposed modes of distribution, it is clear that they used the wrong actual ground Acreage and thus the interests of the deceased siblings have not been catered for. Bearing in mind the consent dated 7<sup>th</sup> May 2015, as filed by the deceased's surviving daughter Margaret Nekesa Muchemi relinquishing her share of the deceased's estate, then the estate will have to be shared amongst the sons of the deceased. The 1<sup>st</sup> and 4<sup>th</sup> Petitioners are of the view that the estate be shared equally while the objectors want the portions of the lands be maintained just like when they were given by the deceased. The County Surveyor did visit the land in question and came up with the size of the whole land on the ground which has a total Acreage of 19.0 HA (47.50 Acres) and comprises of upper dry portion measuring 14.50 HA (32.25 Acres) and the low land (swampy) measuring 4.50 HA (11.25



Acres). It is noted that the survey report does not indicate the specific shares of the portions occupied by each beneficiary on the ground. It is also instructive that none of the parties herein availed any family minutes or called witnesses to corroborate their assertions that the deceased subdivided his land to his children prior to his death. I find in the absence of such evidence, the estate must be shared equally among the beneficiaries.

17. The objectors have claimed that there is a plot measuring 50x100 at Machakha market and have proposed that the same be sold and proceeds shared equally. However, none of the parties have availed the requisite documents such as a search certificate confirming that the same belonged to the deceased. The objector have merely claimed that the said property is yet to be registered in the Names of the deceased. Hence, until the same is done, such property will not be eligible for distribution. The said property will therefore be discounted but the petitioners are at liberty to move the court appropriately for rectification of grant once new assets are discovered.
18. The objectors have also averred that the 1<sup>st</sup> and 4<sup>th</sup> Petitioners have benefitted from the pension of the deceased for a period of five years and that they should now be ordered to render accounts. It is noted that the Objectors did not present documentary evidence to back their claim and hence I find the same has not been proved.
19. In view of the foregoing observations, it is my finding that the 1<sup>st</sup> and 4<sup>th</sup> Petitioners' proposed mode of distribution of the estate is quite reasonable and fair and must be okayed. The Objectors' mode of distribution is not workable and discriminative in view of the lack of evidence of distribution of the land by the deceased prior to his demise. Consequently, the Objectors' protest lacks merit and is dismissed. The grant made to the petitioners herein on 15<sup>th</sup> May, 2014 is hereby confirmed and that the estate of the deceased comprised in land parcel number Bokoli/Bokoli/195 both upper land (dry) and lowland (swampy) shall be distributed as follows:

LR Bokoli/Bokoli/195-UPLAND

No.	Name	Acreage 36.25 Acres (14.50 Ha)
	Geoffrey N. Barasa	6.04 Acres
	Pridgeon Masake Barasa	6.04 Acres
	Maclean Kibeti Barasa	6.04 Acres
	Everlyne Nangekhe, innocent Wangila & Aneriko Wangila	6.04 Acres
	Sandhis Khangati Barasa	6.04 Acres
	Douglas Mulongo Barasa	6.04 Acres

LR Bokoli/bokoli/195-lowland



No.	Name	Acreage 11.50 Acres (4.50 Ha)
	Geoffrey N. Barasa	1.9 Acres
	Pridgeon Masake Barasa	1.9 Acres
	Maclean Kibeti Barasa	1.9 Acres
	Everlyne Nangekhe, Innocent Wangila & aneriko Wangila	1.9 Acres
	Sandhis Khangati Barasa	1.9 Acres
	Douglas Mulongo Barasa	1.9 Acres

20 As the parties are family members, each party shall bear their own costs.

Orders accordingly.

**DATED AND DELIVERED AT BUNGOMA THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2024**

**D. KEMEI**

**JUDGE**

In the presence of :

No appearance Godia for 1<sup>st</sup> & 2<sup>nd</sup> Petitioners

Pridgeon Barasa 2<sup>nd</sup> Petitioner/ 1<sup>st</sup> Objector

Sundays Barasa 3<sup>rd</sup> Petitioner/ 3<sup>rd</sup> Objector

No appearance Everlyne Wangila 2<sup>nd</sup> Objector

Douglas Barasa 4<sup>th</sup> Objector

Kizito Court Assistant

