



REPUBLIC OF KENYA



**In re Estate of Clement Itolondo Likhutu (Deceased) (Succession Cause
366 of 2001) [2023] KEHC 2836 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2836 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 366 OF 2001**

WM MUSYOKA, J

MARCH 24, 2023

**THE MATTER OF THE ESTATE OF CLEMENT ITOLONDO LIKHUTU
(DECEASED)**

RULING

1. On August 6, 2021, I delivered a judgment, in which I postponed confirmation of grant, to allow the administrator to comply with the proviso to section 71(2) of the *Law of Succession Act*, Cap 160, Laws of Kenya, based on directions that were given in that judgment.
2. In compliance, the administrator swore an affidavit on January 31, 2022, and filed it herein on February 2, 2022. He listed the children of the deceased, indicating, for those who had since died, who had survived them. Those alive are Elijah Luchitio Mukabale, Alphonse Mushira Mukabale, Joseph Ngaira, Francis Mukabale, Thomas Mukabale, Christopher Mukabale, Christopher Mboyi, Felistus Mboyi and Teresa Khakayi. Those who are since dead are Ernest Ilaboka Mukabale, Adrian Indeche, Pius Milimu and Martin Bulinda. Ernest was said to have been survived by Elizabeth Achitsa Ilaboka, Edwin Lisutsa Iraboka, Felix Ligabo Iraboka and Alex Shiangala Iraboka. Adrian is said to have been survived by Lucia Andega Indeche and Raphael Tom Indeche. Pius is said to have been survived by Ignatius Mukabale and Polycap Ligavo. The survivors of Martin Bulinda are said to be Agineta Nechesa, Gabriel Kweyu, Denis Indeche and Ligabo Mboyi. It is indicated that Felistus Lihavi and Teresa Khakayi have no interest in the estate, and would like to be summoned to court to state their position.
3. On February 15, 2022, the Advocates, appearing in the matter, obtained summonses for service on some of the survivors of the deceased and beneficiaries of the estate, who were unwilling to come to court. When the summonses were served, a good number of them attended court on May 18, 2022, being Elijah Luchitio Mukabale, Dennis Indeche Bulinda, Elizabeth W Ilabuka, Felistus Likhabo Mukabale, Triza Khakale Itolondo, Francis Mukavale, Joseph Ngaira Mukavale, Ignatius Mukavale, Christopher Mboyi Itolondo, Tom Indeche, Alex Shangala Ilaboka, Rosemary Isabuli Ilaboka, Lina Mutabi Itolondo, Edwin Ilaboka and Ian Kenyatta Itolondo. I gave time to the Advocates to consult with their respective clients. They reached agreement that the estate be distributed between the 3



houses of the deceased. As the estate comprised of 3 pieces of land, it was agreed that each house was to get a single piece of land. They also agreed to have a representative for each house to address the court, to state the position of their respective house. They also agreed that the estate ought to devolve upon the children, whether living or dead. It was also agreed that, in creating boundaries on the ground, at the time of survey and transmission, it would be ensured that the current homesteads would not be disturbed.

4. Francis Mukabale was sworn, and stated the position for the first house. He identified his late mother as Margaret Muhalia Mukavale, who had 5 sons and 1 daughter, who he named as the late Adrian Indeché Mukavale, Joseph Ngaira Mukabale, the late Martin Bulinda Mukabale, Alphonse Muchila Mukabale, Francis Ambeyi Mukabale and the late Teresina Impiti. All the dead children had children of their own. He said that the first house occupied Isukha/Mukhonje/1536, where their mother was buried, and they had agreed on an equal distribution of the property. Mr Shivega informed the court that that equal distribution was to take into account the judgment in Kakamega HCCC No 64 of 2006, where it had been determined that one of the beneficiaries was deemed to have had sold his share.
5. Elijah Luchito Mukabale was sworn, and stated the position of the second house, of Respa Asugwa Mukabale, who had 2 children, Ernest Ilavoka Mukabale and Elijah Luchitio Mukabale. He stated that that house had agreed to take Isukha/Lukose/28, to be shared equally.
6. Christopher Mboyi Itolondo followed. He was from the third house, of Tefina Mjalu Mukabale. She had 5 children, being 3 sons and 2 daughters, being the late Pius Milimu Mukabale, the late Thomas Kenyatta Itolondo, Christopher Mboyi Itolondo, Felistus Lihavi Mukabale and Theresa Khakai Itolondo. He stated that the house had agreed to share Isukha/Shitochi/1108 equally between the 3 sons, with the 2 daughters having renounced their entitlement. The 2 daughters were sworn. Felistus Lihavi Mukabale said that she had her own home, and did not want to take a share in the inheritance, adding that the land ought to be shared equally amongst the sons. Theresa Khakai Itolondo took a similar position.
7. I have seen a copy of the judgment that Mr. Shivega had referred me to, of Chitembwe J, of July 12, 2012, in Kakamega HCCC No 64 of 2006. The relevant bit of it relates to Isukha/Mukhonje/1536, which had been registered in the name of Joseph Ngaira Mukabale. That registration was ordered to be cancelled, and the property reverted to the estate of the deceased herein, Clement Itolondo Likhutu. It was declared that the sales of Isukha/Mukhonje/1537 and 1538, being 0.15 and 0.19, respectively, by Joseph Ngaira Mukabale to Gaitano Martin Salwa Lukhavila and Peter Shikanga, respectively, be deemed as a part of the share due to Joseph Ngaira Mukabale at distribution of Isukha/Mukhonje/1536. An appeal, proffered against that judgment, in Kisumu CA No 5 of 2013, was dismissed, in a judgment delivered on December 10, 2014, copy of which is in the record herein.
8. The positions stated by the representatives of the 3 houses should bring this longstanding matter to a close. I am grateful to Mr Mukavale and Mr Shivega, Advocates, for guiding the parties to the conclusion of the matter.
9. The final orders are:
 - a. That the administrator is hereby confirmed to complete administration of the estate in the terms spelt out here below;
 - b. That Isukha/Mukhonje/1536 shall be shared out equally between the estate of the late Adrian Indeché Mukavale, the estate of the late Martin Bulinda Mukabale, Alphonse Muchila Mukabale, Joseph Ngaira Mukabale, Francis Ambeyi Mukabale and the estate of the late Teresina Impiti, with



the share due to Joseph Ngaira Mukabale being less the acreage of Isukha/Mukhonje/1537 and 1538, as directed in Kakamega HCCC No 64 of 2006;

c. That Isukha/Lukose/28 shall be shared equally between the estate of the late Ernest Ilavoka Mukabale and Elijah Luchitio Mukabale;

d. That Isukha/Shitochi/1108 shall be shared equally between the estate of the late Pius Milimu Mukabale, the estate of the late Thomas Kenyatta Itolondo and Christopher Mboyi Itolondo;

e. That a certificate of confirmation of grant shall issue accordingly;

f. That the shares allotted to any child of the deceased, who has since died, shall be subjected to succession proceedings in his or her estate;

g. That each party shall bear their own costs; and

h. That any party aggrieved by these orders has leave of 28 days to move the Court of Appeal, appropriately.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA ON THIS 24th DAY OF March 2023

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Mr. JJ Mukavale, Advocate for the administrator.

Mr. Shivega, instructed by Victor Shivega & Company, Advocates for the objector.

