



REPUBLIC OF KENYA



**In re Estate of Samuel Garama Kiponda alias Samuel Kiponda (Deceased)
(Succession Cause 110 of 2013) [2023] KEHC 21302 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21302 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
SUCCESSION CAUSE 110 OF 2013
SM GITHINJI, J
JULY 27, 2023**

BETWEEN

TABU SAMUEL KIPONDA 1ST PETITIONER

TUMAINI SAMUEL KIPONDA 2ND PETITIONER

AND

ELIKANA NGALA GARAMA 1ST OBJECTOR

ZAWADI SAMUEL KIPONDA 2ND OBJECTOR

RULING

1. This court made the following orders in the ruling dated 22 September 2022
 - i. The grant issued to the Petitioners on 28 November 2018 and certificate of confirmation of the even date is hereby set aside.
 - ii. The property Sokoke/Dida/1270 is part of the deceased's estate.
 - iii. The parties to file consent on distribution within 30 days from dates herein or file separate proposals on distribution within same span in default court to go ahead and make verdict with or without parties input.
 - iv. Parties to bear their costs.
2. The parties herein failed to file any proposal on the mode of distribution as directed. When this matter came up for directions on 12 June 2023, Mr. Miller, counsel for the Petitioners told the court that the parties had failed to agree on distribution for the reason that some of the beneficiaries were not entitled to inherit. Mr. Miller prayed for a hearing date before the estate could be distributed.
3. Miss Mwangi, opposing counsel, contested that, that has been the petitioners' position since 2013. That the court should proceed on the availed evidence and pleadings filed.



4. As already established in the aforementioned ruling, the deceased during his lifetime had two wives; Martha Samuel Kiponda and Zawadi Samuel Kiponda. A perusal of the pleadings herein and affidavit of Elikana Ngala establishes that Martha's children were; -
 - i. Tabu Samuel Kiponda
 - ii. Tumaini Samuel Kiponda
 - iii. Penina Samuel Kiponda
 - iv. Constance Dama SamuelZawadi's children; -
 - i. Elikana Ngala Garama
 - ii. Naomi Kabibi Garama
5. As per the petitioners' affidavit for summons of confirmation of grant, and the ruling delivered by this court on 22 September 2022, the deceased's estate comprises of the following assets; -
 1. Plot. No. Sokoke/Dida/968 measuring 3.59Ha
 2. Plot No. Kilifi/Mtondia/157 measuring 13 acres
 3. Plot No. Sokoke/Dida/1270 measuring 3.65Ha
 4. House at Kisauni on Plot No. 90/I/MN
 5. House at Kilifi
 6. Employment benefits at Ministry of Finance-customs department
 7. Benefits at NSSF
6. The applicable law governing the estate herein is section 40 of the *Law of Succession Act* cap 160 which states that;
 1. 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 net 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.
 2. The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.
7. It must also be noted that in this kind of proceedings, it is not possible to achieve equality but at least some equity must be attained.
8. Notably, the Objectors disclosed in the aforementioned affidavit by Elikana that Plot. No. Sokoke/Dida/968 had already been transferred to Martha and her children. The benefits held at the Ministry of Finance and NSSF were not disclosed. It was also not clear as to the amount of rent being collected from the two houses in Kisauni and Kilifi. It is my finding, given the available information that the distribution be as follows; -



DESCRIPTION OF PROPERTY	HEIRS	SHARES
Plot. No. Sokoke/Dida/968-3.59Ha	Martha Samuel Kiponda Tabu Samuel Kiponda Tumaini Samuel Kiponda Penina Samuel Kiponda Constance Dama Samuel	Equally
Plot No. Kilifi/Mtondia/157-13 acres	Tabu Samuel Kiponda Tumaini Samuel Kiponda Penina Samuel Kiponda Constance Dama Samuel Elikana Ngala Garama Naomi Kabibi Garama	Equally
Plot No. Sokoke/Dida/1270-3.65Ha	Zawadi Samuel Kiponda Elikana Ngala Garama Naomi Kabibi Garama	Equally
House at Kisauni on Plot No. 90/I/MN	Martha Samuel Kiponda	Absolute
House at Kilifi	Zawadi Samuel Kiponda	Absolute
Employment benefits at Ministry of Finance	Martha Samuel Kiponda Tabu Samuel Kiponda Tumaini Samuel Kiponda Penina Samuel Kiponda Constance Dama Samuel Zawadi Samuel Kiponda Elikana Ngala Garama Naomi Kabibi Garama	Equally
Benefits at NSSF	Martha Samuel Kiponda Tabu Samuel Kiponda Tumaini Samuel Kiponda Penina Samuel Kiponda Constance Dama Samuel	Equally



	Zawadi Samuel Kiponda Elikana Ngala Garama Naomi Kabibi Garama	
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RULING READ, SIGNED AND DELIVERED VIRTUALLY AT MALINDI THIS 27TH DAY OF JULY, 2023.

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S.M. GITHINJI

JUDGE

In the absence of; -

- 1. Miss Mwangi for the Interested Parties**
- 2. Mr Miller for the Respondent**

