



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Murunga Nalwlsie (Deceased) (Succession Cause  
3 of 2002) [2023] KEHC 23120 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 23120 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
SUCCESSION CAUSE 3 OF 2002  
REA OUGO, J  
SEPTEMBER 29, 2023  
IN THE MATTER OF THE ESTATE OF MURUNGA NALWLSIE  
(DECEASED)**

**RULING**

1. This succession cause was filed in 2002 about 21 years ago. Murunga Nalwlsie ( the deceased ) died on the July 13, 1971. On the January 9, 2002 Charles Munyefu Murunga the son of the deceased filed a petition for letters of administration Intestate. In his affidavit in support of the said petition he listed the surviving beneficiaries. The deceased had six (6) wives and children. The supporting affidavit filed on the January 9, 2002 and an affidavit filed on the 3/1/2003 lists the following beneficiaries;
  - i. Zabeti Nanjala.....1<sup>st</sup> wife
  - ii. George Masinde Murunga.. son
  - iii. Patrick Wanjala Murunga....son
  - iv. Rabson Wegesa Murunga...son
  - v. Andrew Wafula Murunga...son
  - vi. Susana Nasimiyu Wakasika.. daughter married
  - vii. Annah Nasambu Ngome
  - viii. Macuma Namalwa....2<sup>nd</sup> wife ( Deceased)
  - ix. Charles Munyefu.....son
  - x. Christopher Masika...son
  - xi. Agnes Nasimiyu Makhaso...daughter married
  - xii. Dinah Shienywe Murunga....3<sup>rd</sup> wife



- xiii. Edward Wanyonyi Nalwelisie...son
  - xiv. Eliud Murunga Nalwelisie...son
  - xv. Stephen Kiniale Nalwelisie...son
  - xvi. Rosemary Nakhumicha Wanyonyi...daughter married
  - xvii. Judith Nasambu Simiyu...daughter married.
  - xviii. Selina Nakhumicha Murunga...4<sup>th</sup> wife
  - xix. Raymond Wafula Murunga...son
  - xx. Ernest Masika Murunga...son
  - xxi. Margaret Naliaka Wasike...daughter married
  - xxii. Florence Namemba Wanyonyi...daughter married
  - xxiii. Lorna Nanjala Wamalwa.....daughter married
  - xxiv. Gladys Nelima Murunga....5<sup>th</sup> wife ( Remarried)
  - xxv. Protus Wanyonyi Murunga...son
  - xxvi. Caroylne Nekesa Karakacha..daughter married
  - xxvii. Scholastic Namalwa Juma....daughter married
  - xxviii. Timina Namaemba Murunga..6<sup>th</sup> wife ( Deceased)
  - xxix. Julius Okumu Muremi...son
  - xxx. Alice Naliaka Muchika...daughter married.
2. The deceased left 2 parcels of land namely; LR Ndivisi/Ndivisi No 501-48 acres and LR Ndivisi/Ndivisi No 541- 51 acres.
  3. On the 20/1/2004 a notice of objection was filed by 8 sons of the deceased, namely George Masinde Murunga, Eliud Siundu Murunga, Ernest Masika Murunga, Andrew Wafula Murunga, Stephen Nalwelisie Murunga, Raymond Wafula Murunga, Protus Wanyonyi Murunga and Christopher Masika Murunga. Their objection was on the mode of distribution.
  4. On the April 1, 2014 this court appointed the following person as administrators; Charles Munyefu Murunga ( Charles), Eliud Siundu Murunga (Eliud) , Protus Wanyoni Murunga ( Protus) and Ernest Masika Murunga ( Ernest ). The court ordered that the parties proceed to agree on the mode of distribution and that the application to confirm the grant be filed.
  5. On the February 5, 2016 Charles Munyefu filed an application to confirm the grant issued on the April 1, 2014. His proposed mode of distribution as stated in his supporting affidavit dated December 30, 2015. The following wives had died as at December 2015, Zabeti Murunga ( 1<sup>st</sup> wife), Dinah Murunga( 3<sup>rd</sup> wife) and Selina Murunga ( 4<sup>th</sup> wife).
  6. Various affidavits were filed after the said application. Affidavits of protest were filed by Ernest on the March 9, 2016 and 16/1/2017 and another protest by Rabson Murunga on the September 8, 2015.



7. The hearing of the application to confirm the grant to determine the mode of distribution was partly done by Justice Ali Aroni ( as she then was) and Justice Riechi.
8. Ernest Masika Murunga (Pw1) testified as follows; the deceased was his father. That the grant was given to the 4 administrators. He is not aware of any child who was left. They have not been able to agree on the mode of distribution. The land is about 51 acres. Charles is seeking 1/75 acres out of parcel no 541. They wish to distribute equally amongst the sons. That George Masinde Murunga is getting 6.0 from parcel no 501 and 2.5 from parcel no 541. That as per their custom George being the eldest brother is to get more. Eliud is to get 5 acres from parcel no 501 and 2 acres from parcel no 541. That he relies on his mode of distribution filed on the March 7, 2017. Ernest testified before Justice Riechi on the March 2, 2020 and stated the following; Parcel No 541 has 51 acres and parcel no 501 has 48 acres. That the deceased had 5 wives. That he objects to the mode of distribution proposed by Charles. He asked the court to adopt his schedule of distribution. During cross examination he stated that George did not sell land to Robson. That Zebedayo Mang'eni is a brother of the deceased and not a son of the deceased. That he was given 4 acres.
9. On the March 7, 2017 the court was informed that the 1<sup>st</sup> objector George Masinde and Christopher Masike Murunga had died. On the October 11, 2018 Mr Kundu for the petitioner Charles Munyefu Murunga informed the court that Charles too had died. Mr Kundu sought time to substitute Charles. This was not done. On the March 30, 2022 Mr Kunde informed the court that Stephen Nawelisie had died. 2 administrators Ernest Masika an Protus Wanyonyi are still alive. Mr Kundu after making efforts to substitute Charles and with no success in doing so informed the court he will not make any submissions however the court should look at the petitioner's affidavits on the mode of distribution. He referred to the affidavits filed on the 8/8/2016 ( supplementary affidavit), affidavit dated December 30, 2016 for plot no 501 and one dated December 30, 2016 for lot no 541.
10. Ernest filed his written submission on the May 19, 2023. His submission are as follows; that section 38 of the Law of Succession should be applied to the mode of distribution amongst the surviving beneficiaries. That the beneficiaries have consented that the deceased George Masinde Murunga be allotted a slightly higher share of 8.5 acres on the ground as he is the senior most. That this is grounded on section 3 (2) of the *Judicature Act* Cap 8 where African Customary Law is to be applied by courts as long as it is applicable and not repugnant to justice and morality or inconsistent with any written law. Reliance was made in Eugene Cotran *Restatement of African Law* ( volume 20 , the law of Succession where it was stated that, " Inheritance under Bukusu Customary Law is patrilineal. The pattern of inheritance is based on the equal distribution of a man's property among his sons, subject to the provision that the elder son may get a slightly larger share..." ).
11. That the hotch-porch beneficiaries Zebedayo Mangeni a paternal uncle to the beneficiaries (4 acres), Benjamin Kiberenge Chelenje (2 acres) paternal uncle and Murunga Pwanja (2.5 acres) whose land was erroneously adjudicated together with that of the deceased, that this is explained in the affidavit of Ernest Masika Murunga. Mr Waswa submitted orally that since the deceased passed on in 1971 there is window for the court to apply the African Customary Law as the *Law Succession Act* came into operation in 1981.

### **Analysis and Determination**

12. I will now consider the proposed mode of distribution by the parties. Ernest filed a mode of distribution dated the March 2, 2020 and also relied on his affidavit dated December 5, 2016. He has listed the following beneficiaries; George Masinde Murunga (son), Eliud Siundu Murunga (son), Ernest Masika Murunga ( son), Raymond Wafula Murunga (son) , Andrew Wafula Murunga (son),



Stephen Nalwelisie Murunga (son), Protus Wanyonyi Murunga (son), Christopher Masika Murunga (son), Edward Wanyonyi Nalwelisie (son), Protus Wanyonyi Murunga (son), Christopher Masika Murunga (son), Edward Wanyonyi Nalwelisie (son), Charles Munyefu Murunga (son), Rabson Wegesa Murunga (son), Patrick Wanjala Murunga (son), Zebedayo Mangeni (uncle), Benjamin Kiberenge Chelenge (purchaser from the deceased), Julius Okumu Muremi (uncle) and Murunga Pwanja Each son is inherit 5 acres from parcel no 501 and 2 acres parcel except Gerege who is to inherit 6 acres from parcel no 501 and 2.5 acres from parcel no 541. Zebedayo is their uncle whom they have agreed to allot him 4 acres from parcel no 541, Benjamin bought 2 acres in parcel no 501 from the deceased, Julius is their uncle and they agreed to allot him 5 acres from parcel no 501 and Pwanja 2.5 from parcel no 541 being compensation for wrong adjudication compassing his land as part of their later father. Ernest in his affidavit dated December 5, 2016 states that their sisters are all in agreement to let their brothers share the estate of their father as they are all happily married in their respective husband homes.

13. Rabson filed an affidavit dated August 6, 2016. He depones that his late father shared out parcel number 541 amongst his 4 sons with each getting about 12.75 acres. Their uncle Zebedayo is to get 4 acres. That parcel no 501 was shared amongst the 9 sons by the clan in 1977 and their boundaries are clearly marked out for each beneficiary. That George Masinde Murunga his brother sold to him his share of 5 acres in 1980 and moved and settled in Nalando in 1965 and that George has not stayed in the said land. That he took possession of the 5 acres and has settled his children there. That sometime later George had tried to have the agreement of selling and to him reversed but he refused as he had sold his children in the said land. That when his son Samwel Lusweti Wekesa died in September 2011 he was buried in the said land he had bought from George Masinde Murunga, the latter never raised any objection.
14. I was asked to refer to the affidavits filed by Charles Munyefu Murunga who is said to be deceased. The said affidavits were not subjected to cross-examination to test the evidence deponed therein. I have read the said affidavits just to compare with the mode of distribution filed by the petitioner Charles Murunga. As per the mode of distribution filed on the 5/2/2016 on parcel no. 501 it was suggested that each son gets 5 acres each. On parcel no 541 it was suggested that Edward Wanyonyi Nalwelisie inherits 11.75 acres and Sheban Nalwelisie inherits 4 acres; in trust of Job Sikuku Mangeni, Benjamin Nalwelisie, Hamna Simiyu Mangeni, Masika Mageni, Mukhwana Mangeni and Margaret Nalika Mangeni. Rabson Wegesa to inherit 11.75 acres, Gladys Nasimyu Wanjala -11.75 in trust; Bramwel Murunga Wanjala, Dismas Lusweti Wanjala, Boniface Mabele Wanjala, Evans Wekesa Wanjala and Charles Munyefu Murunga to inherit 11.75 acres. In the affidavit filed on the August 8, 2016 Charles Munyefu Murunga deponed that Benjamin Kiverenge Chelenge the husband of Juliana Namusia Keverenge bought 3 acres from parcel number no 501 and not 2 acres from parcel no. 541 and that Murunga Pwanja is not a beneficiary as alleged. That the late George Masinde Murunga is not entitled to any share of the estate as he sold the whole portion to his brother Rabson Wegesa Murunga in 1980 and settled in Nalondo area. That the family of Murunga Nalwelisie did not hold any meeting for distribution except the one held in 1977. That Zebetayo Mangeni had 4 acres in parcel no 541 and not as indicated in Ernest's proposal. That the proposed mode of distribution by the objectors is meant to shift people from one place where they have settled for the past 30 years since the land was shared by the clan in 1977.
15. I have carefully perused the court and I find as follows; there is no affidavit that was sworn attaching the death certificates of Charles Munfeyu Murunga and Christopher Masike Murunga. The affidavits deponed by Charles were not tested by way of cross-examination before any of the previous judges who heard the parties, even though I have referred to them.



16. The deceased died in 1971 before the [Law of Succession Act](#) Chapter 160 ( the Act) was enacted in 1981. Section 2 on Application of the Act provides as follows;

- "(1) 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.
- (2) The estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their estates shall commence or proceed so far as possible in accordance with this Act."

17. I am guided by the provisions of section 2 (2) of the Act. the parties have talked of a meeting of 1977, however none of them have attached any material to demonstrate that there was a meeting and that they had reached some agreement. One thing that they agree on is that George should get more land, one more acre in parcel no 501 and 2.5 parcel no 541. Rabson claims that he bought 5 acres from George in 1980 and that he has settled his family.

18. The deceased's 5 wives are not alive. Section 38 of the Act provides that, "where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children". Guided by the said section and Bukusu customs that the eldest son shall inherit a slightly higher share, I will accept the proposal that George shall inherit 6 acres from parcel no 501. I am persuaded that he sold 5 acres to Rabson so what is left for George is one acre in parcel no 501 and 2.5 acres in parcel no 541. It is deponed that the daughters of the deceased agreed with their brothers that they will not share in any of the land parcels. This is deponed by Ernest.

19. The estate of Murunga Nalwelsie shall be distributed as follows;

1. George Masinde Murunga..Ndivisi/ Ndivisi.... 501- 2.0 acres  
Ndivisi/ Ndivisi.. 541-2.5 acres
2. Eliud Siundu Murunga.. Ndivisi/ Ndivisi..... 501- 5.0 acres  
Ndivisi/Ndivisi ..... 541-2.0 acres
3. Ernest Masika Murunga.. Ndivisi/Ndivisi.... 501-5.0 acres  
Ndivisi/Ndivisi..... 541-2.0 acres
4. Raymond Wafula Murunga Ndivisi/Ndivisi.. 501-5.0 acres  
Ndivisi/Ndivisi... 541-2.0 acres
5. Andrew Wafula Murunga Ndivisi/Ndivisi... 501-5.0 acres  
Ndivisi/Ndivisi... 541- 2.0 acres
6. Stephen Nalwelsie Murunga Ndivisi/Ndivisi.. 501 -5.0 acres  
Ndivisi/Ndivisi .. 541-2.0 acres
7. Protus Wanyonyi Murunga Ndivisi/Ndivisi.. 501-5.0 acres



- Ndivisi/Ndivisi... 541-2.0 acres
8. Christopher Wanyonyi Murunga..Ndivisi/Ndivisi..501-5.0 acres  
Ndivisi/ Ndivisi.. 541-2.0 acres
  9. Edward Wanyonyi Nalwelsie...Ndivisi/Ndivisi.. 501-5.0acres  
Ndivisi/Ndivisi..541-2.0 acres
  10. Charles Munyefu Murunga... Ndivisi/Ndivisi..541-7.0 acres
  11. Rabson Wegesa Murunga Ndivisi/Ndivisi...541-7.0 acres
  12. Patrick Wanjala Murunga Ndivisi/ Ndivisi.. 541-7.0 acres
  13. Zebedayo Mangeni Ndivisi/ Ndivisi...541- 4.0 acres
  14. Benjamin Kiberenge Ndivisi/Ndivisi..501- 2.0 acres
  15. Julius Okumu Muremi Ndivisi/Ndivisi..501-501-5.0 acres
  16. Murunga Pwanya Ndivisi/ Ndivisi ..541- 2.5 acres.

There shall be no orders as to costs. Orders accordingly.

**DATED , SIGNED AND DELIVERED AT BUNGOMA THIS 29<sup>TH</sup> DAY OF SEPTEMBER 2023.**

**R. E. OUGO**

**JUDGE**

**In the presence of”**

**Petitioner- Absent**

**Counsel for Petitioner- Absent**

**Mr. Waswa For the Objector- Present**

**Wilkister/Okwaro -C/A**

