



REPUBLIC OF KENYA



In re Estate of Maruti Wanga Wamamu (Deceased) (Succession Cause 447 of 2005) [2023] KEHC 26310 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEHC 26310 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 447 OF 2005
SC CHIRCHIR, J
NOVEMBER 30, 2023**

RULING

1. On 23.9.2022 Justice Musyoka delivered a judgment on this matter, in which he determined a number of issues he had identified. In the said judgment the judge withheld the distribution of the Estate on grounds that there was no full disclosure in respect to the beneficiaries and the assets left behind by the deceased.
2. He then directed the Administrators to file further affidavits disclosing all the children of the deceased and the proof of ownership of the properties, left behind by the deceased.
3. The 1st Administrator filed a further affidavit dated 18.9.2023 while the 2nd Administrator file one dated 8.11.2023. Both affidavits are compliant with the directions given on 23.9.2023, save that the 1st Administrator went further and proposed some mode of distribution of the identified property.

Determination

4. From the two affidavits, I have ascertained the widows and children of the deceased as follows'-
 - a). 1st house was the house of Teresa Kamuze (Deceased) and her children were :
-Stephen Wanga (deceased), but left behind children.
 - b). 2nd house was the house of Agnes Wesonga (Deceased) and her children were: -
Cyrila Wanga alias Serela Wanga Matura (deceased and left behind 1 child.
 - c).3rd House was for Veronica Indakwa (Deceased) but left the following children:
 - 1.Alfred Ouma Matura
 2. Moses JumaMaruta (deceased) but left behind children.
 - 3.Mary Wanga Ogolla alias Mary Nechesa Wanga (deceased) but left behind children
 - 4.Agneta Makokha Maruta (deceased) but left children behind



5. Caroline Anyonge Maruta (deceased) but left children behind
6. Joseph Bylialia Maruta – deceased but left no child.
- d). 4th house was the house of Arnoda Ayieko Maruta-deceased but left children as follows:
 1. Martin Joseph wamamu
 2. Berita Okumbo Maruta
 3. Valeria Oduong Mruta
 4. Hendrica Changui Maruta
- e). 5th House was the house of Kelesansia Makokha Maruta (Deceased) and left children as follows:
 - a. Dennis Wetta maruta
 - b. Harrison Wanga Maruta
 - c. Beatrice Maruta Obondo
 - d. Hellen Atemba Maruta
 - e. Obatia Wanga (deceased) but left children.
5. From the above list, the deceased had 17 children. Whereas some have since died, they left their own children behind. However, it is stated that one Joseph Bylialia from the 3rd house died without a child or children. For purposes of distribution therefore this heir will be left out.
6. It also emerged from the evidence, and there is consensus between the parties in this regard, that Stephen Wanga Maruta had been given Parcel Numbers South Wanga/Koyonzo/1199 and South Wanga/Sumeko/218 during the lifetime of the deceased. From the certified copies of the register it is indicated that parcel No. 1199 is 12.5 acres, while parcel 218 is 1.3 Ha. Both properties were transferred to said Stephen Maruta in January 1969, during the life time of the deceased.
7. The gift is what the *Law of Succession Act* refers to as Gift Intervivos . Under section 42 of the Act, such gifts are supposed to be considered when distributing the net intestate Estate so as to ensure equality or/and equity in the distribution. Considering the total aggregate size of the remaining properties, whose particulars I will come back to thereafter, I am of the view that the family of Stephen Wanga has been adequately provided for.
8. Thus, discounting the late Joseph Bylialia and the family of Stephen, the persons who are entitled to benefit from the remaining properties are 15 children of the deceased or their Estates
9. The following properties that have been identified by the Administrators, and their sizes, as can be ascertain from the Title documents or search certificates produced ,are as follows:
 - a. North wanga/Koyonzo/920 – 23.5 acres
 - b. South Wanga/Lureko/064 – 3 acres
 - c. South Wanga/Lureko/55 – 6.3 acres
 - d. South Wanga/Lureko/42 – 13 acres

Total 45.8 acres
10. The size of Plot No. 15 at Buihyio/Buhuyi market at Matungu is not indicated.



11. All the Deceased's wives have since died, and in the circumstances, I consider section 38 the appropriate section in determining the distribution of the Estate as opposed to section 40 of the Act. Section 38 deals with a situation where the deceased has left no spouse but children while section 40 deals with distribution of the Estate within a polygamous setting. Section 38 of the Act provides as follows: "where an intestate has left a surviving child or children but no spouse, the net intestate 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"

While section 40 provides: "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"

12. In any event, am of the view that the net effect of section 40 and 38 of the Act is the same, namely equal distribution of the deceased's Estate among his survivors.

13. I need to also point out the fact that the Act makes no distinction between the male and female children. All the children are entitled to a share of the estate on equal basis. That is the import of sections 51(2)g, 35(1)(b) 5 and 38 of the Act. The implied suggestion, clearly emanating from both parties herein, that the female children, especially those who are married, ought not to share from Estate is clearly erroneous.

14. I have also considered the available evidence, indicating that some of the beneficiaries herein have occupied some of the parcels, and am mindful that the proposed mode of distribution would as much as possible not cause unnecessary disruption or create a need for relocation by many of them.

15. Taking all foregoing into account, I order the distribution of the available Estate properties as follows:

1. North Wanga/Koyonzo/920 to be shared in equal portions by

- a. Dennis Weta Maruta
- b. Martin Joseph Wamamu
- c. Alfred Ouma Maruta
- d. The Estate of Moses Juma Maruta
- e. Harrison Wanga Maruta
- f. Hellen Atemba Maruta
- g. Beatrice Maruta Obondo

2. South Wanga/Lureko/42 to be shared equally by :

- a. The Estate of Opatia Wanga
- b. The Estate of Agneta Makokha Maruta
- c. Berida Okumbo Maruta
- d. Valeria Oduong Maruta
- e. Hendrica engui Maruta.

3. South Wanga/Lureko/064- to the Estate of Serela Wanya Maruta alias Cyrula Wanga wholly.



4. South Wanga/Lureko/55- to be shared equally between :
 - a. The Estate of Mary Nechesa Wanga –
 - b. The Estate of Caroline Anyonge Maruta
5. Plot No. 15 at Buhuyi Market: To be sold and the proceeds to be shared equally between the survivors or their Estates, as the case may be.
16. Each party to meet their own costs.
17. Right of appeal 28 days

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF NOVEMBER 2023

S. CHIRCHIR

JUDGE.

In the presence of:-

E. Zalo- Court Assistant

Beneficiaries.

