



**In re Estate of Elijah Lihungu Ingosi (Deceased) (Succession Cause 513 of 2011) [2022] KEHC 11182 (KLR) (22 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 11182 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 513 OF 2011  
WM MUSYOKA, J  
JULY 22, 2022**

**IN THE MATTER OF THE ESTATE OF ELIJAH LIHUNGU INGOSI (DECEASED)**

**RULING**

1. The deceased herein died on 16<sup>th</sup> April 2006. He died possessed of Kakamega/Kambiri/930 and Isukha/Shirere/2129, measuring 2.34 HA and 1.44HA, respectively. The survivors of the deceased were listed in the Chief's letter of Bukhungu Location dated 29<sup>th</sup> June 2011, as widow, Selina Burache Lihungu, sons, Sospeter Mmasi Elijah, Walter Shikala Likhungu, Cleophas Winjila Lihungu and Elkana Angula Likhungu, daughter in law, Alice Nyarotso Were, Judith Aliata. A petition in those terms was lodged herein on 4<sup>th</sup> August 2011, and a grant was made herein on 27<sup>th</sup> July 2021, to Selina Burache Likhungu. A grant of letters of administration intestate was duly issued, dated 31<sup>st</sup> July 2012.
2. What I am called upon to determine is the summons dated 25<sup>th</sup> August 2021. It is brought by the administratrix, Selinah Burache Lihungu. She reflects the beneficiaries of the estate of the deceased to be the seven persons listed in the Chief's letter, and the assets available for distribution to be Kakamega/Kambiri/930 and Isukha/Shirere/2129. It is proposed that Kakamega/Kambiri/930 be shared equally between Sospeter Mmasi Elijah and Elikana Ang'ula Lihungu 1.17HA each; and Isukha/Shirere/2129 as follows; Walter Shikala Likhungu and Cleophas Ingosi Lihungu 0.26HA each, Alice Were Nyarotso and Judith Tamba Aliata 0.16HA each. There is a form 37, consent on distribution, filed together with the application, which is not signed by any of the beneficiaries.
3. The application came up for hearing on 22th November 2021, the seven individuals named in the chief's letter, the petition and application were in attendance. To comply with the proviso to section 71(2) of the Lawsof Succession Act, Cap 160, Laws of Kenya, and Rule 40(4) of the [Probate and Administration Rules](#), I interviewed the administratrix. She told me that the deceased had five sons and five daughters. She said four of his children died, being Lihumba, Rosebella, Indasi and Alusiola. Alusiola was said to have been survived by children, and she said that Alice and Judith were from that household. She said the five daughters were Rosebella, Jones, Indasi, Imbosa, Catherine and Sipeto. Of course, Rosebella and Indasi were among those who died without issue.



4. I heard from those in attendance, to comply with Rule 41(1) of the Probate and Administration Rules, that is to say Sospeter Mmasi, Walter Shikala, Cleophas Winjila, Alice Nyarotso and Judith Aliata. They all supported the distribution proposed in the application
5. I postponed confirmation, in terms of section 71(2)(d) of the *Law of Succession Act*, to allow attendance by the daughters, who had not been disclosed in the Chief's letter, the petition and the application. The daughters who attended on 16<sup>th</sup> February 2022 were Catherine Lihungu, Jones Lihungu, Lillian Lihungu and Joyce Mmbone. I interviewed them in compliance with Rule 41(1) of the Probate and Administration Rules. Joyce Mmbone renounced her right to a share. She said she was comfortable where she was and with what she had. Lillian Lihungu she was taking her share, and so did Catherine Lihungu and Jones Lihungu.
6. Where an intestate is survived a widow and children the law that applies to the sharing of his estate is section 35(1)(5) of the *Law of Succession Act*, which envisages that the property devolves to the estate during her lifetime, and upon termination of her life interest, through death, the same devolves to the children equally., the said provision states.

“Where intestate has left one surviving spouse and child or children

- (1) Subject to the provisions of section 40, where an intestate has left one surviving spouse and a child or children, the surviving spouse shall be entitled to—
  - (a) the personal and household effects of the deceased absolutely; and
  - (b) a life interest in the whole residue of the net intestate estate: Provided that, if the surviving spouse is a widow, that interest shall determine upon her re-marriage to any person.
- (5) Subject to the provisions of sections 41 and 42 and subject to any appointment or award made under this section, the whole residue of the net intestate estate shall on the death, or, in the case of a widow, re-marriage, of the surviving spouse, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

7. The deceased had two assets. Kakamega/Kambiri/930 appears to be located outside the heavily settled areas, while Isukha/Shirere/2129 appears to be located within the environment and could be more valuable of the two. Little wonder then that Kakamega/Kambiri/930 is shared among only two of the children, compared with Isukha/Shirere/2129 which is shared by the other four persons. Those getting a share in Kakamega/Kambiri/930 are also getting large acreages. The four surviving daughters of the deceased should be brought into this mix; but only three are taking as one has renounced. They alluded that the share that would have gone to their mother is what was earmarked for them. They are children of the deceased, and they should share equally with the sons of the deceased, according to Section 35(5) and 38 of the *Law of Succession Act*. It has not been explained why the sharing of Isukha/Shirere/2129 is uneven, yet the law provides for equality.
8. The final distribution are as follows;
  - a. That Isukha/Shirere/2129 shall devolve upon Selina Burache Lihungu during life interest and thereafter to Walter Shikala Lihungu, Cleophas Ingoso Lihungu, the estate the late Patrobas Alusiola Lihungu (Alice Nyarotso Were and Judith Aliata), Lillian Lihungu, Catherine Lihungu and Jones Lihungu equally;



- b. That Kakamega/Kambiri/930 shall devolve upon Peter Mmasi Elijah and Elkana Ang'ula Lihungu, equally;
- c. That the grant herein is confirmed in those terms, and a certificate of grant shall issue accordingly,
- d. That the matter shall be mentioned after 6 months, in compliance with section 83(g)(i) of the Laws of Succession Act, to confirm transmission of the estate as per the confirmation orders and completion of administration, to enable the court close its file;
- e. That costs of the application to be borne by the estate; and
- f. That any party aggrieved has leave of twenty-eight (28) days to challenge the order at the Court of Appeal.

9. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 22<sup>ND</sup> DAY OF JULY 2022**

**WM MUSYOKA**

**JUDGE**

Mr. Erick Zalo, Court Assistant.

Sospeter Lumasi

Elikana ANgula

Alice Nyastso

Catherine lihungu

Jones Lihungu

Walter Lihungu Shikala

Judith ALiata

Lillian Lihungu

Joyce Mmbone Lihungu

