

THE REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

(Coram: Odunga, J)

SUCCESSION CAUSE NO. 582 OF 2008

IN THE MATTER OF ESTATE OF STEPHEN NZAU KOKA (DECEASED)

TAVITHA WANZA NZAU.....1ST PETITIONER

JOSIAH KIILU NZAU.....2ND PETITIONER/APPLICANT

-VERSUS-

JOHN NZIOKI NZAU.....1ST OBJECTOR/PROTESTER

MUKULU NZAU KOKA.....2ND OBJECTOR

RULING

1. On 10th day of December, 2019, this Court delivered a ruling in this Cause in which it directed that the two houses continue occupying and using the properties which are in their occupation and use. However, a valuation of the same was to be undertaken with a view to determining their true value for the purposes of the distribution and once that was undertaken, the house that had an upper hand in terms of the valuation would compensate the other house either through payment of the value to its advantage or by transfer of land commensurate with the said value. The other properties which were not in occupation of either house including the shares would be distributed equally.

2. It has now come to light that Land Parcel No. Mumbuni/Kasinga/2515 also formed part of the estate of the deceased but was inadvertently omitted during the said distribution. The 1st administrator, **Josiah Killu Nzau**, in his affidavit in support of his application dated 10th November, 2020 proposes that the said parcel be included in the list of the deceased's assets and be sold at the current market value and the proceeds therefrom be shared equally between the two houses. He has not given any reason for that proposal.

3. On the other hand, **Josiah Nzioki Nzau**, the 2nd administrator proposes that the said property be valued and the same be shared equally between the two houses pursuant to the ruling of this court aforesaid. His reason for so suggesting is that the two houses have been utilising half portion of the said parcel each.

4. I have considered the foregoing. Pursuant to my said ruling I do not see any reason why I should depart from the spirit of the said ruling. Let a valuation of the said property be undertaken by the Machakos County Valuer and a report be filed herein. Thereafter the said property will be divided equally amongst the two houses each house taking the part occupied or being utilised by itself and be dealt with in accordance with my said earlier ruling.

5. It is so ordered.

6. There will be no order as to costs.

Read, signed and delivered in open Court at Machakos this 23rd day of February, 2021.

G V ODUNGA

JUDGE

In the Presence of:

Mr Mukula for Mrs Nzei for the 1st Administrator/Applicant

CA Geoffrey