



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

SUCCESSION CAUSE NO. 75 OF 2009.

IN THE MATTER OF THE ESTATE OF SHADRACK KHISA NALIAKHO (DECEASED)

FRANK KHISA NALIAKHO.....1ST PETITIONER

CHRISISTIM WEKESA KHISA.....2ND PETITIONER

CATHERINE NASIMIYU KHISA.....3RD PETITIONER

GLADYS NAKHUMICHA KHISA.....4TH PETITIONER

JUDGEMENT

Shadrack Apollo Naliakho died on 31.7.2008. He was survived by Widow Susan Khisa, 6 Sons, and 5 Daughters. He died intestate. His estate comprised of Land, Buildings, Shares and Money in Bank Accounts. On 27.4.2009, his widow, Susan Khisa and Sons Frank Khisa and Chrispinus Nyongesa filed this Succession Cause. They applied for grant of letters of administration intestate and the grant was issued jointly to; (1) Susan Khisa (2) Frank Khisa (3) Chrisistim W. Khisa. Susan Khisa, the 1st Petitioner passed on on 22.5.2014 before the grant could be confirmed.

On 2.7.2015 on application, Catherine Nasimiyu Khisa and Gladys Nakhumicha Khisa joined Frank Khisa and Chrisistim Wekesa as the 3rd and 4th Petitioners. Frank Khisa died before confirmation and was substituted by Edward Simiyu Khisa. The Petitioners now are;

(1) Edward Simiyu Khisa (1st Petitioner)

(2) Chrisistim Wekesa Khisa (2nd Petitioner)

(3) Catherine Nasimiyu Khisa (3rd Petitioner)

(4) Gladys Nakhumicha Khisa (4th Petitioner)

The deceased at time of death was survived by the following dependants;

1. Susan Naliaka Khisa (Widow) deceased

2. Maurice Khisa (Son) deceased

3. Fredrick Naliakho Khisa (Son) deceased

4. Rose Khisa (Daughter) deceased

5. Frank Khisa Naliakho (Son) deceased

6. Catherine Nasimiyu Khisa (Daughter)

7. Gladys Nakhumicha Khisa (Daughter)

8. *Lilian Matanda Khisa (Daughter)*

9. *Chrisistim Wekesa Khisa (Son)*

10. *Chrispinus Nyongesa Khisa (Son)*

11. *Stella Nafula Khisa (Daughter)*

12. *Edward Simiyu Khisa (Son)*

He also left the following Assets;

PROPERTIES:

(a) Those registered in the deceased's name

NO.	TITLE NUMBER	LOCATION NAME
1.	East Bukusu/South Kanduyi/30	Near Kanduyi Primary School
2.	East Bukusu/South Kanduyi/33	Ten Star
3.	West Bukusu/North Miyanga/272	Miyanga
4.	East Bukusu/North Kanduyi/14	Namuyemba (Home)
5.	East Bukusu/South Kanduyi/461	Mufutu
6.	East Bukusu/North Kanduyi/3045	Khisa Estate
7.	Bungoma/Township/282	Namachanja (a)
8.	Bungoma/Township/283	Namachanja (b)
9.	East Bukusu/South Kanduyi/6033	Near Kanduyi Inn

(b) Those not registered in the deceased's name

NO.	TITLE NUMBER	LOCATION NAME
1.	East Bukusu/South Kanduyi/981	Within Bungoma Central Business District
2.	Rainbow House	Kanduyi Malaba Stage
3.	Bungoma/Township/221	Municipal Market Bungoma (Safaricom House)
4.	Shops at Bisunu	Bisunu Shopping Centre
5.	South Malakisi/Kilisiru/[....]	Ancestral at Bisunu village

(c) Other properties/shares

NO.	TITLE NUMBER	NUMBER OF SHARES
1.	Standard Chartered Bank Account No.[....]	155
2.	Kenya Commercial Bank Account No.[....]	8000
3.	Safaricom Limited Account No.[....]	900
4.	National Bank Account No.(unknown Account)	Under - Unclaimed Assets Authority

The 4 Petitioners were tasked with the duty of filing a mode of distribution of the estate to all the beneficiaries. They were however unable to agree on a common mode of distribution. The court directed that they file their respective proposals on mode of distribution.

The 1st and 2nd Petitioners filed their mode of distribution which is supported by the following beneficiaries who have appended their signature thereto.

1. CHRISPINUS NYONGESA KHISA **SIGNED**
2. CHRISISTIM WEKESA KHISA **SIGNED**
3. JOSEPHINE NEKESA WATTI **SIGNED**
4. FLETCHER VUGUZA KHISA SIGNED
5. ROSE ANYOSO NDEGE **SIGNED**
6. LYDIA NYABOKE MIYOGO **SIGNED**
7. EDWARD SIMIYU KHISA **SIGNED**

Their proposal is as follows;

EAST BUKUSU/SOUTH KANDUYI/30

ROSE ANYOSO NDEGE-DAUGHTER IN LAW

EAST BUKUSU/SOUTH KANDUYI/33

LYDIA NYABOKE MIYOGO & JOSEPHINE NEKESA WATTI-4.5 ACRES

CHRISPINUS NYONGESA KHISA-4.5 ACRES

EAST BUKUSU/NORTH MIYANGA/272

LYDIA NYABOKE MIYOGO & JOSEPHINE NEKESA WATTI-2.5 ACRES

CHRISPINUS NYONGESA KHISA-2.5 ACRES

EAST BUKUSU/NORTH KANDUYI/14

UPPER PORTION

FLETCHER VUGUZA KHISA(Daughter in law)- 3 Acres

CHRISISTIM WEKESA KHISA-4 Acres

EDWARD SIMIYU KHISA-4 Acres

EDWARD SIMIYU KHISA, CHRISISTIM WEKESA KHISA, CATHERINE NASIMIYU KHISA & GLADYS NAKHUMICHA KHISA-1 Acre

LOWER PROTION

FLETCHER VUGUZA KHISA(Daughter in law)- 4 Acres

CHRISISTIM WEKESA KHISA-3 Acres

EDWARD SIMIYU KHISA- 2.3 Acres

EAST BUKUSU/SOUTH KANDUYI/981-In the name of Susan Naliaka Khisa

CATHERINE NASIMIYU KHISA, GLADYS NAKHUMICHA KHISA, LILIAN MATANDA KHISA & STELLA NAFULA KHISA

EAST BUKUSU/SOUTH KANDUYI/461

KHISA HOLDING LIMITED

EAST BUKUSU/NORTH KANDUYI/3045

LEWIS WANG'ASA WANJALA-Grandson

BUNGOMA/TOWNSHIP/282

CATHERINE NASIMIYU KHISA & LILIAN MATANDA KHISA

BUNGOMA /TOWNSHIP/ 283

GLADYS NAKHUMICHA KHISA & STELLA NAFULA KHISA

EAST BUKUSU/SOUTH KANDUYI/6033

STELLA NAFULA KHISA

STANDARD CHARTERED BANK SHARES ACCOUNT NO. 27573

LILIAN MATANDA KHISA

KENYA COMMERCIAL BANK SHARES ACC. NO. M0047451

CHRISPINUS NYONGESA KHISA

SAFARICOM LTD. SHARES ACC. NO. 3779854

EDWARD SIMIYU KHISA

The 3rd and 4th Petitioners filed their proposal dated 30.6.2019 and supported by the following beneficiaries who have appended signatures;

1. CATHERINE NASIMIYU KHISA *SIGNED*
2. LILIAN NANJALA KHISA *SIGNED*
3. STELLA NAFULA KHISA *SIGNED*

4. LEWIS WANG'ASA WANJALA

SIGNED

Their proposal is as hereunder;

	DESCRIPTION OF PROPERTY	NAME	SHARE OF
A	LR NO. E. BUKUSU/S.KANDUYI/30 (Near Kanduyi Primary School)	GLADYS NAKHUMICHA KHISA	2 Acres
		STELLA NAFULA	2 Acres
		ESTATE OF FREDRICK KHISA	1 Acre
		LILIAN NANJALA KHISA	1 Acre
B	LR. NO. W. BUKUSU/N. MIYANGA/272	CHRISPINUS NYONGESA	1½ Acres
		ESTATE OF FRANK KHISA	1½ Acres
		LEWIS WANG'ASA WANJALA	1 Acre
		ESTATE OF FREDRICK KHISA	1 Acre
C	LR. NO. E. BUKUSU/N. KANDUYI/14 (NAMUYEMBA HOME)	a. ESTATE OF MAURICE KHISA	2 Acres on dry land 3 Acres near the river
		b. CHRISISTIM KHISA	2 Acres on dry land 3 Acres near the river
		c. CATHERINE NASIMIYU KHISA	1 Acre on dry land
		d. GLADYS NAKHUMICHA KHISA	2 Acres on dry land
		e. LILIAN NANJALA KHISA	2 Acres on dry land 1 Acre near the river
		f. STELLA NAFULA	1 Acres near the river
		g. EDWARD SIMIYU	2 Acres on dry land 3 Acres near the river
		h. LEWIS WANG'ASA WANJALA	2 Acres on dry land
			1 Acre near the river
		i. ESTATE OF FREDRICK KHISA	1½ Acres near the river
	(Family homestead to be held in trust By the Administrators)		
D	BUNGOMA TOWNSHIP 282 &	GLADY NAKHUMICHA KHISA	

	283 (NAMACHANJA ESTATE)		
		CATHERINE NASIMIYU KHISA	WHOLE
		LILIAN NANJALA KHISA	
		STELLA NAFULA	
		LEWIS WANG'ASA WANJALA	
E	E. BUKUSU/S. KANDUYI/33	ESTATE OF GRANK KHISA	3 Acres
	TENSTAR AREA)	CHRISPINUS NYONGESA KHISA	3 Acres
		CATHERINE NASIMIYU KHISA	3 Acres
F	E. BUKUSU/N. KANDUYI/3045	LEWIS WANG'ASA WANJALA	WHOLE
	(KHISA ESTATE	LILIAN NANJALA KHISA	
H	E. BUKUSU/S. KANDUYI/461	FRANK KHISA	50 feet by 100 feet
	(MUFUTU ESTATE)	EDWARD SIMIYU	50 feet by 100 feet
		CHRISISTIM KHISA	50 feet by 100 feet
		CHRISPINUS NYONGESA	50 feet by 100 feet
		ESTATE OF FREDRICK KHISA	50 feet by 100 feet
		ESTATE OF MAURICE KHISA	50 feet by 100 feet
		CATHERINE NASIMIYU KHISA	50 feet by 100 feet
		GLADYS NAKHUMICHA KHISA	50 feet by 100 feet
		LILIAN NANJALA KHISA	50 feet by 100 feet
		STELLA NAFULA	50 feet by 100 feet
		LEWIS WANG'ASA WANJALA	50 feet by 100 feet
I	BUNGOMA 221 (SAFARI BAR BUILDING)	CHRISISTIM KHISA	
		EDWARD SIMIYU	
		CHRISPINUS NYONGESA	
		ESTATE OF FRANK KHISA	

		ESTATE OF MAURICE KHISA	WHOLE
		ESTATE OF FREDRICK KHISA	
J	BISUNU MARKET PLOT	CHRISISTIM KHISA	
		CHRISPINUS NYONGESA	
		EDWARD SIMIYU	WHOLE
		ESTATE OF FRANK KHISA	
		ESTATE OF MAURICE KHISA	
		ESTATE OF FREDRICK KHISA	
K	RAINBOW BUILDING PLOT	CATHERINE NASIMIYU KHISA	
		LILIAN NANJALA KHISA	
		STELLA NAFULA	WHOLE
		GLADYS NAKHUMICHA KHISA	
L	KENYA COMMERCIAL BANK	CHRISPINUS NYONGESA	
	(SHARES (8000) A/C. NO.M00477451	EDWARD SIMIYU	
		ESTATE OF MAURICE KHISA	
		ESTATE OF FRANK KHISA	
		CHRISISTIM KHISA	WHOLE
		ESTATE OF FREDRICK KHISA	
M	STANDARD CHARTERED SHARES (1155) A/C NO. 27573	CATHERINE NASIMIYU KHISA	
		GLADYS NAKHUMICHA KHISA	
		STELLA NAFULA	WHOLE
		LILIAN NANJALA KHISA	
		LEWIS WANG'A SA WANJALA	
N	SAFARICOM SHARES (900) A/C. NO.3779854	CATHERINE NASIMIYU KHISA	
		GLADYS NAKHUMICHA KHISA	

		STELLA NAFULA	WHOLE
		LILIAN NANJALA KHISA	
		LEWIS WANG'ASA WANJALA	
O	LR. NO. E. BUKUSU/SOUTH KANDUYI/ 6033	STELLA NAFULA	0.02 Ha sold to STELLA NAFULA

Before the court embarks on distribution of the estate, the following facts commend themselves; firstly, East Bukusu/South Kanduyi/981 is registered in the name of Susan Naliakho Khisa, Bungoma Township/221 is registered in the name of Agnes Naliakho and Malakisi/Kulisuru/452 in the names of Dismas Mulongo, Shadrack Khisa, John Tulula, Agrey Wabomba and Joseph Wanambisi. These properties are therefore not available for distribution in these proceedings as they do not form part of the deceased's estate.

As regards Malakisi/Kulisuru/452, it is a finding of this court that the deceased herein owned a portion of an undivided portion of land. None of the parties has indicated what the share of the deceased in that portion of land is. As such the court is unable to make a conclusive determination on the same.

It is also clear that some of the deceased's dependants also died and are survived by their widows and children who are now the deceased's grandchildren and the parties have conceded provisions for them.

The court has considered both proposed modes of distribution. Any distribution of the estate must include all the beneficiaries and be equal or at least equitable in form as mandated by Section 35-37 of the Law of Succession Act Cap 160.

I have considered the rival proposals and the Court's distribution of the estate of the late Shadrack Appollo Khisa is as hereunder.

1. EAST BUKUSU/SOUTH KANDUYI/30

Gladys Nakhumicha Khisa	2 Acres
Stella Nafula	2 Acres
Rose Anyoso Ndege	2.5 Acres.

2. EAST BUKUSU/SOUTH KANDUYI/33

Lydia Nyaboke Miyogo	2.25 Acres
Josephine Nekesa Watti	2.25 Acres
Chrispinus Nyongesa Khisa	4.5 Acres

3. EAST BUKUSU/NORTH MIYANGA/272

Chrispinus Nyongesa	1. 5 Acres
Lydia Nyaboke Miyogo	0.75 Acres
Josephine Nekesa Watti	0.75 Acres
Rose Anyoso Ndege	1 Acre
Lewis Wang'asa Wanjala	1 Acre

4. EAST BUKUSU/NORTH KANDUYI/14

Fletcher Vuguza Khisa 5 Acres

Christim Wekesa Khisa 5 Acres

Edward Simiyu Khisa 5 Acres

Catherine Nasimiyu Khisa 1 Acre

Gladys Nakhumicha Khisa 2 Acres

Lilian Nanjala Khisa 3 Acres

Stella Nafula 1 Acre

Lewis Wang'asa Wanjala 3 Acres

Rose Anyoso Ndege 1.5 Acres.

The administrators to be registered jointly in the remainder portion.

5. EAST BUKUSU/SOUTH KANDUYI/461

Lydia Nyaboke Miyogo & Josephine Nekesa 50 X 100 Feet

Edward Simiyu 50 By 100 Feet

Christim Khisa 50 X 100 Feet

Chripinus Nyongesa 50 X 100 Feet

Rose Anyoso Ndege 50 X 100 Feet

Fletcher Vuguza Khisa 50 X 100 Feet

Catherine Nasimiyu Khisa 50 X 100 Feet

Gladys Nakhumicha Khisa 50 X 100 Feet

Lilian Nanjala Khisa 50 X100 Feet

Stella Nafula Lewis Wang'asa Wanjala 50 X 100 Feet

6. EAST BUKUSU/NORTH KANDUYI/3045

Lewis Wang'asa Wanjala

7. BUNGOMA/TOWNSHIP/282

Jointly to:

Gladys Nakhumicha Khisa

Lilian Nanjala Khisa

8. BUNGOMA /TOWNSHIP/ 283

Jointly to:

Catherine Nasimiyu Khisa

Stella Nafula Khisa

9. EAST BUKUSU/SOUTH KANDUYI/6033

Stella Nafula Khisa

10. STANDARD CHARTERED BANK SHARES ACCOUNT NO. 27573

To be shared equally between all the beneficiaries

11. KENYA COMMERCIAL BANK SHARES ACC. NO. M0047451

To be shared equally among all the beneficiaries.

12. SAFARICOM LTD. SHARES ACC. NO. 3779854

To be shared equally among all the beneficiaries.

Consequently, a certificate of confirmation of grant to issue in those terms.

This being a family matter each party to bear their own costs.

Dated, signed and delivered at Bungoma this 30th day July, 2021.

S N RIECHI

JUDGE