



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 106 OF 1991**

**IN THE MATTER OF THE ESTATE OF JAPHUED KAKAI MURANDA (DECEASED)**

**RULING**

1. On 7<sup>th</sup> February 2020 I delivered a judgement herein on confirmation of the grant herein. Although I did make definitive orders on distribution of the estate, I did not make final orders, as certain things needed to be resolved first. One, the grant of letters of administration intestate on record needed rectification, to include Walter Japhed Angatia as an administrator. Two, the subdivision of Ndivisi/Muchi/1620, into Ndivisi/Muchi/8686, 8687, 8688, 8689 and 8690, needed to be cancelled and reverted back to the original title in name of the deceased. Three, the file in Webuye SPMSC No. 26 of 2013 needed to be called for and consolidated with the instant cause.

2. All three things have now been done. A grant of letters of administration intestate in the names of Rodah Nanyama Kakai and Walter Japhed Angatia issued, as rectified, on 7<sup>th</sup> February 2020. The subtitles created from Ndivisi/Muchi/1620 were reverted back to the old title in the name of the deceased, as evidenced by a certificate of official search that was placed on record, dated 9<sup>th</sup> March 2021. The file in Webuye SPMSC No. 26 of 2013 was made available, and the said cause was consolidated with the instant cause on 27<sup>th</sup> January 2021.

3. That having been done, the only thing outstanding is distribution of the estate. As noted in my judgment, the only asset available for distribution is Ndivisi/Muchi/1620, given that it was established that Kakamega/Matsakha/189 did not form part of the estate of the deceased. The persons beneficially entitled to a share in the estate were also identified. The persons claiming as purchasers had allegedly acquired an interest from a person who had no authority to sell the property to them, at the time the said property was allegedly sold to them, and, as such, they are not entitled to a share in the estate.

4. At paragraph 34 of the judgment, I gave directions on how the sole asset was to be shared out, in accordance with section 40 of the Law of Succession Act, Cap 160, Laws of Kenya. Paragraph 34 reads as follows:

*“The effect of that provision is that the assets would be divided as between the houses of the deceased, taking into account the number of children in each house, and adding any surviving widow as an additional unit to the children. From the material before me, the deceased had married three wives, and therefore he had three houses. The first house comprised of a widow, two sons and three daughters. That would mean that that house comprised of six units. The second house comprised of two daughters, and therefore it comprised of two units; while the third house had two children, a son and a daughter, and therefore it has two units. That total up to ten units. Ndivisi/Muchi/1620 should therefore be divided into ten units, out of which the first house should get six, and the second and third houses two units each. That would mean that Ndivisi/Muchi/1620 should be shared out at the ratio of 3:1:1.”*

5. The final orders that I shall make in the circumstances are:

- (a) That the administrators appointed through the grant made on 7<sup>th</sup> February 2020 are hereby confirmed;**
- (b) That Ndivisi/Muchi/1620 shall be distributed in terms of paragraph 34 of the judgement delivered on 7<sup>th</sup> February 2020;**
- (c) That the share going to the 1<sup>st</sup> house shall pass to the surviving widow during life interest, and thereafter to the 5 children in equal shares;**
- (d) That the shares going to the 2<sup>nd</sup> and 3<sup>rd</sup> houses shall pass to the children in each of the two houses in equally;**
- (e) That a certificate of confirmation of grant shall issue in those terms;**
- (f) That sole asset of the estate is situated within Bungoma County, consequently, this cause shall be transferred to the High**

**Court of Kenya at Bungoma for finalization;**

**(g) That each party shall bear their own costs; and**

**(h) That any party aggrieved by any of the orders made above, has leave, of 28 days, to move the Court of Appeal, appropriately, on appeal.**

6. It is so ordered.

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 6<sup>th</sup> DAY OF AUGUST, 2021**

**W. MUSYOKA**

**JUDGE**