



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MAKUENI**

**HC P&A NO. 146 OF 2017**

**IN THE MATTER OF THE ESTATE OF GABRIEL KYATU MUNYALA (DECEASED)**

**PAUL NGUMBAU KYATU.....PETITIONER**

**VERSUS**

**PETER MATHEKA KYATU & 15 OTHERS.....RESPONDENTS**

**RULING**

1. The deceased Gabriel Kyatu Munyala died intestate and was survived by his 2 widows and children's as follows:-

**A. 1<sup>ST</sup> WIFE LUCIA MAWIA KYATU.**

**Children**

- i.) Peter Matheka Kyatu, son – Adult
- ii.) Mutiwa Kyatu, daughter – Adult
- iii.) Muendo Kyatu, son – Adult
- iv.) Ngei Kyatu, son – Deceased

**B. 2<sup>ND</sup> WIFE PRISCILA NDEKE KYATU**

**Children**

- i.) Ndunge Kyatu, daughter – Adult
- ii.) Nduku Kyatu, daughter – Adult
- iii.) Mwikali Kyatu, daughter – Adult
- iv.) Mwende Kyatu, daughter – Adult
- v.) Paul Kyatu, son – Adult
- vi.) Peter Kyatu, son – Adult
- vii.) Ndolo Kyatu, son – Adult
- viii.) Joseph Kyatu, son – Adult
- ix.) Muange Kyatu, son – Adult
- x.) Munyala Kyatu, son – Adult

xi.) Wambua Kyatu, son – Adult

xii.) Muendo Kyatu, son – Adult

2. This is contained in chief's letter dated 13/07/2009.

3. The Petitioners procured the letters of grant but the grant could not be confirmed as the distribution was not agreed by all the beneficiaries.

4. This entailed the court to urge parties to put their different mode of distribution proposals to enable the court to make a decision on distribution.

5. That is the only issue pending in this matter which commenced 10 years ago.

6. The deceased left 2 wives and each wife's house has made their own proposals on distribution.

7. The first wife's house via affidavit sworn on 02/10/2017 proposes that vide paragraph 9 that the deceased properties be registered in a joint names of the 2 wives to hold in trust of all family members including themselves.

8. On the other hand the 2<sup>nd</sup> wife's house proposes distribution as follows:-

*a. The family land measuring 12.8 Acres Title No. UKIA/UTAATI/868 located in Ukia location, Makueni County be shared equally among the sons and two wives of the deceased, that is , Lucia Mawia Kyatu Manyala, Peter Matheka, Wambua Kyatu, Muendo Kyatu, Priscilla Mbeke Kyatu, Paul Ngumbau Kyatu, Peter Kialyuvo, Ndolo Kyatu, Joseph Mbidyo, Muange Kyatu and Manyala Kyatu ensuring that each one of them gets a share of approximately 1.164 Acres.*

*b. The Standard Chartered Bank shares totaling one thousand one Hundred and Fifty Five (1,155) be shared equally among the sons and two wives of the deceased enabling each to get approximately 105 shares.*

*c. The Commercial plot located at Mukuyuni market along the Machakos – Wote road title UKIA/NZUUNI/4 measuring 1.73 Hectares be shared equally among the 2<sup>nd</sup> wife, Priscila MBEKE Kyatu, and her six (6) sons, that is, Paul Ngumbau Kyatu, Peter Kialyuvo, Ndolo Kyatu, Joseph Mbindyo, Muange Kyatu and Manyala Kyatu ensuring that each one of them gets a share of 0.0247 Hectares.*

*d. The commercial plot located at Mukuyuni market along the Machakos – Wote road title UKIA/NZAUUNI/1427 measuring 0.19 Hectares be shared equally among the 1<sup>st</sup> wife, Lucia Mawia Kyatu Manyala, and her three (3) sons, that is, Peter Matheka Kyatu, Wambua Kyatu and Muendo Kyatu ensuring that each one of them gets a share of 0.0475 Hectares.*

9. I have gone through the proposals above by both sides and took into account the provisions of section **40 LSA Cap 160**, the provisions of section **40 LSA** states;

#### **Where intestate was polygamous**

**(1) 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.**

**(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.**

10. In accordance with the same provisions of LSA act, I distribute the deceased estate as follows:-

1. First, the survivors of the deceased person are 16 in total, all children and 2 wives. 1<sup>st</sup> house has 5 beneficiaries and 2<sup>nd</sup> house has 11 beneficiaries.

2. Thus UKIA/UTAATI/868 12.8 Acres shall be divided as follows:-

**a.  $\frac{5}{16}$  to the 1<sup>st</sup> wife's house to be registered in names of Lucia Mawia Kyatu on her own behalf and that of her children.**

**b.  $\frac{11}{16}$  to the 2<sup>nd</sup> wife house to be registered in the name of Priscila Mbeke Kyatu to hold in trust on her own behalf and that of her children.**

3. The Standard Chartered Bank shares (1155) in number to be shared equally between the 2 wives.

4. UKIA/NZUUNI/4 1.74 Ha to be registered in Priscila Mbeke Kyatu as trustee on her own behalf and that of her own children.

5. UKIA/NZUUNI/1427 0.19 Ha to be registered in the names of Lucia Mawia Kyatu on her own behalf and that of her children.

11. The grant is hereby confirmed and distribution to be put in certificate of confirmation of grant as above distributed.

12. No orders as to costs.

**SIGNED, DATED AND DELIVERED THIS 17<sup>TH</sup> DAY OF MAY, 2018, IN OPEN COURT.**

**C. KARIUKI**

**JUDGE**

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