



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**SUCCESSION CAUSE NO.228 OF 2015**

**(Arising from P&A No.2 of 2014)**

JOHN MUKUNJI MUCHAMI ALIAS MUKUNJI MUCHAMI.....DECEASED

**AND**

FRIDAH NANJALA MUKUNJI.....PETITIONER

**JUDGEMENT**

1. This matter was initiated in the Principal Magistrates' Court and transferred to the High Court pursuant to an order made by Hon. S.N. Abuya on 31<sup>st</sup> July, 2015 for lack of jurisdiction.
2. Pending before Court is distribution of the estate of the deceased one John Mukunji Muchami. Although the lower Court now has jurisdiction this Court is of the view that returning the file back after about 2 years will not be in the interest of justice and called for the beneficiaries since no consent had been obtained on mode of distribution.
3. The deceased left behind property land reference No. Ndivisi/Muchi/887 approximate area 6.8Ha.
4. Names provided by the administrators of survivors are as follows:
  - i) Fridah Nanjala Mukunji
  - ii) Musa Mukweyi Mukunji
  - iii) Fred Namaswa Wekesa
  - iv) Joseph Barasa Mukunji
  - v) Patrick Wafula Mukunji
  - vi) Benjamin Masinde Mukunji
  - vii) Mekanika Mukunji Simon
  - viii) Mikisi Mukunji
  - ix) Gladys Nekhoye Kurem

x) Musa Namaswa Mukunji

5. All except **Fridah Nanjala** and **Glady's Nekhoye Kurem** are sons of the Deceased. The two were wives. Gladys is no longer at the home and of the deceased has relocated and re-married elsewhere.

6. **Glady's Nekhoye** is the administrator of the estate and in her proposal suggested distribution as follows:

- i) Fridah Nanjala Mukunji - 2.00Ha
- ii) Musa Mukweyi Mukunji – 1.0Ha
- iii) Fred Namaswa – 0.88Ha
- iv) Joseph Barasa Wekesa – 0.93Ha
- v) Patrick Wafula Mukunji – 0.64Ha
- vi) Benjamin Masinde Mukunji – 0.61Ha
- vii) Mekanika Mukunji )
- viii) Mikisi Mukunji ) 0.4Ha
- ix) Gladys Nakhoye Kurem )
- x) Musa Namaswa Mukunji )

7. **Mekanika, Mikisi** and **Musa** are sons of Gladys who remarried and has no interest in the Estate. Secondly the administrator did not give reason why the 4 would to get a paltry share of the estate as she kept a huge chunk to herself yet she only has a life interest in the Estate.

8. At the hearing of the application for confirmation **Mekanika** opposed the distribution of the Estate as proposed. I find his objection justifiable as the proposed list is unfair, unreasonable and unjust and indeed his consent and that of his brothers had not been obtained.

9. **Mekanika** as stated earlier one of the beneficiaries found the proposed distribution unfair but failed to make any proposal. Section 27 of the Law of Succession Act donates unfettered discretion to the Court in the sharing of the Estate which discretion must be exercised judicially. See the case of **Mary Rono Vs Jane Rono & Another (2005)e KLR**

10. The Law applicable in the distribution of intestate Estate of a deceased is provided for under the Law of Succession Cap 160 and one need not look any further, this read together with the Constitution of Kenya 2010 gives a basis upon which the Court can proceed to equitably distribute the Estate.

11. Section 4 of the Law of Succession Act provides as follows;

**“40(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 intesta 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”.**

12. The deceased herein left surviving him 2 widows, one has since remarried. He also left eight sons, consequently and based on the Law as cited above and guided I will distribute the Estate comprising Ndivisi/Muchi/887 approximate 6.8Ha (16.796 acres) as follows;

**1st House**

- i) Fridah Nanjala Mukunji – 1 acre (life interest) thereafter to revert to her sons, Musa, Fred, Joseph and Patrick in equal shares).
- ii) Musa Mukweyi Mukunji – 1.97 acres
- iii) Fred Namaswa Wekesa – 1.97 acres
- iv) Joseph Barasa Mukunji – 1.97 acres
- v) Patrick Wafula Mukunji – 1.97 acres
- vi) Benjamin Masinde Mukunji – 1.97 acres

**2nd House**

- i) Gladys Nekhoye Kurem – Nil  
(as she re-married)
- iii) Mekanika Mukunji – 1.97 acres
- iii) Mikisi Mukunji – 1.97 acres
- iv) Musa Namaswa Mukunji – 1.97 acres
- vi) The Deputy Registrar to effect the transfers within 30 days.
- vii) Each party will bear their own costs.

DATED and DELIVERED at BUNGOMA this 27<sup>th</sup> day of April 2017

**ALI-ARONI**

**JUDGE**