



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

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 951 OF 2014**

**IN THE MATTER OF THE ESTATE OF JAMENI MUHAVI ALIAS MUHAVI  
KIBIHI.....DECEASED**

**BETWEEN**

**MAXWEL ISAYA KIVIHYA.....  
.....PETITIONER**

**VERSUS**

**KETA MUHONJA SALOME.....  
.....OBJECTOR**

**JUDGMENT ON DISTRIBUTION**

**Introduction**

1. In this cause, grant of letters of Administration intestate to the estate of Jameni Muhavi alias Muhavi kabihi was made jointly to Maxwell Isaiyah Kivihya and Keta Muhonja Salome now deemed as joint petitioners. The joint petitioners were to apply for confirmation of grant within sixty(60) days of issue of the grant that is 20<sup>th</sup> September, 2016

**The Application**

2. Keta Muhonja Salome filed the summons for confirmation grant on the 13<sup>th</sup> December, 2016 which is supported by her affidavit. She states at paragraph 6 thereof that the deceased left behind 2 parcels of land No. Kakamega/Mudete/52 measuring 0.40ha and Kakamega/Mudete/186 measuring approximately 0.28ha. She has also outlined the beneficiaries to the estate who are:-

- 1) Maxwell Kivihya Isaiyah
- 2) Gideon Amani Muhavi
- 3) Elam Ojangi Muhavi
- 4) Enock Onzere
- 5) Priscilla Ligaya Kamonya

6) Keta Muhonja Salome

3. She has deponed further that the family has failed to agree on the mode of distribution but she has annexed her proposal on how the land should be distributed.

4. She maintains that her co-petitioner has already been given land parcel No. Kakamega/Mudete/124 by the deceased which is not disputed. She wants this court to determine the distribution. The co-petitioner admitted as much and also confirmed he was not interested in the other two parcels now sought to be distributed among the other beneficiaries. It is also noted from the evidence that Priscilla Ligaya Kamunya, the eldest child of the deceased is not interested in having a share of the decease’s estate.

**Determination**

5. The distribution of the deceased estate is subject to the provisions of The Law of Succession Act and especially part V thereof. The appropriate provision to apply in this case is Section 38 thereof which provides for distribution of the estate where the deceased has left a surviving child or children. In such a case, the estate is to be shared equally among all the children. If there is more than one child.

6. The spirit of Part V especially Sections 35, 38 and 40 of the act is equal distribution of the intestate estate amongst the children of the deceased. Equal distribution is envisaged regardless of the age, gender or financial status of the children.

7. In this cause I have noted from the various papers filed in the matter that the beneficiaries are all adults. I have also considered the law on the matter and in particular Section 38 of the Act (above). I have also considered the proposals on the distribution of the estate and on the basis of the above, this court distributes the estate of the deceased as follows:-

- 1. Kakamega/Mudete/52 which measures 0.40 acres be subdivided into four parts and shared amongst the four contending beneficiaries.
- 2. Kakamega/Mudete/186 which measures 0.28 acres be subdivided into four portions and shared amongst the four contending beneficiaries.
- 3. The surveyor to survey and subdivide accordingly.
- 4. Costs of this application be costs in the cause.
- 5. Gideon Amani Muhavi, Elam Ojangi Muhavi, Enock Onzere and Keta Muhonja Salome shall equally share the cost of the survey.

Orders accordingly

Judgment delivered dated and signed in open court at Kakamega this 30<sup>th</sup> day of November 2017

RUTH N. SITATI

JUDGE

In the presence of:-

Present in person.....for Petitioner

Present in person.....for Objector

Polycap.....Court Assistant