



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

FAMILY DIVISION

SUCCESSION CAUSE NO. 169 OF 2009

IN THE MATTER OF THE ESTATE OF THE LATE FRANCIS ATUBACHI LUKALE

BETWEEN

PHILIP MUCHESIA.....PETITIONER/RESPONDENT

AND

PETER SHIAKAVA MAVACHI.....OBJECTOR/APPLICANT

RULING

Introduction

1. The deceased herein died intestate on the 7.5.2004. At the time of his death he had two wives and twelve children but by the time of filing this succession cause one of the wives had also died. The deceased left the following children surviving him;-

- 1) Wilimina Mmanuli (Daughter) 54 Years
- 2) Catherine Amola (Daughter) 47 Years
- 3) Gerald Muhanji (Son) 45 Years
- 4) Mercyline Atavachi (Daughter) 42 Years
- 5) Philip Muchesia (Son) 38 Years
- 6) Rose Atavachi (Daughter) 36 Years
- 7) Patrick Siema (Son) 34 Years
- 8) Mary Atavachi (Daughter) 31 Years
- 9) Sussy Amola (Daughter) 29 Years
- 10) Lonah Muhongo (Daughter) 27 Years
- 11) Peter Shakava (Son) 25 Years

12) George Lukale (Son) 24 Years

2. During his lifetime, the deceased owned three parcels of land namely

- a) Isukha/Shinyalu/446 0.6ha
- b) Isukha/Shinyalu/51
- c) Isukha/Shinyalu/1225

2. The grant of letters of Administration intestate was issued to Philip Muchesia Atavachi on the 29.10. 2009. In the year 2010 one of the deceased's sons Gerald Muhanji Atavachi passed away. The petitioner has now filed an application for confirmation of the grant but the issue of distribution is the problem. The petitioner's proposal on distribution of LR. No. Kakamega/Shinyalu/446 is as follows;-

- a) Maurice Lukavale – 0.46 Acres
- b) Philip Muchesia – 0.16 Acres
- c) Patrick Siema – 0.16 Acres
- d) Peter Shiakava - 0.31 Acres
- e) George Lukale 0.31 Acres
- f) Wilimina Mmanuli – Nil
- g) Catherine Amola – Nil
- h) Mercyline Atabachi- Nil
- i) Rose Atabachi – Nil
- j) Mary Atabachi – Nil
- k) Sussy Atabachi – Nil
- l) Lonah Atabachi – Nil

4. Four of the daughters of the deceased filed an undated affidavit claiming that they had no interest/claim on the deceased's estate. There is again a supplementary affidavit by the petitioner dated 25.05. 2016 by which the Petitioner distributed the deceased's land LR No. Kakamega/Shinyalu/446 between himself Philip Muchesia – 0.3 acres and Patrick Siema – 0.3 acres.

5. This mode of sharing is objected to by Peter Shiakava through the affidavit of protest filed on the 10.10. 2016 claiming that the petitioner had omitted him from the distribution of the deceased's estate. He adds that the 2nd family has also been left out of the distribution including their deceased brother's family Gerald Muhanji. His proposal is that the deceased's estate be shared equally among the following people.

- 1) Philip Muchesia
- 2) Peter Shiakava Atavachi
- 3) Patrick Siema

4) George Lukale

5) Gerald Muhanji – deceased being represented by his widow – Margaret Adisa and his son Mourice Lukale.

6. The petitioner responded to the objector’s affidavit of protest by filing a “statement of defence” where he clearly states that the deceased had three parcels of land: Isukha/Shinyalu/446, 51 and 1225.

7. He also states that there is another succession cause No. 183/2009 which involves his grandfather. He proposes that Isukha/Shinyalu/51 which is big be shared between the two families, Isukha/Shinyalu/1225 be given to two brothers of the 2nd family that is George Lukale and Peter Shakava and the share of the late brother Gerald Muhanji be given to his elder son Maurice Aluvale to hold in trust for his brother and sisters.

Determination.

8. The only issue for determination in this cause is one of distribution of the deceased’s parcels of land. It has come out clearly from the affidavits that the deceased had three parcels of land as earlier stated that is:-

a) Isukha/Shinyalu/446

b) Isukha/Shinyalu/51

c) Isukha/Shinyalu/1225

9. it is also clear from the affidavits that the daughter’s to the deceased have indicated that they do not have a claim on the deceased land/property. However, before the order on distribution is made, it is important that a search be done to confirm the actual acreage of the other two parcels of land that is Isukha/Shinyalyu/521 and Isukha/Shinyalu/1225. The only official search available on the file is in respect of L.R Isukha/Shinyalu/446.

10. The searches should be filed within two (2) weeks from the date of this ruling to enable a quick disposal of this cause.

Orders accordingly

Ruling delivered dated and signed in open court at Kakamega this 30th day of November 2017

RUTH N. SITATI

JUDGE

In the presence of:-

Present in person.....Petitioner

Absent.....Objector

Polycap.....Court Assistant