



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

PROBATE & ADMINISTRATION CAUSE NO.124 OF 2003

RE: ESTATE OF MANGOLI MAELO (DECEASED)

AND

PETER WAFULA MANG'OLI.....PETITIONER

AND

BEATRICE NABANGALA.....1ST OBJECTOR

VIOLET NELIMA.....2ND OBJECTOR

ROSE TINDI MANGOLI.....3RD OBJECTOR

CHRISTINE MUCHUMA.....4TH OBJECTOR

M S.....5TH OBJECTOR

PASCILIZA NEKESA MANG'OLI.....6TH OBJECTOR/APPLICANT

JUDGEMENT

1. This matter revolves round the estate of the late Mang'oli Maelo (deceased) who died on the 22nd of September, 1976 leaving behind, surviving him his 2nd widow and several children.

2. It is not in dispute that he had the following children from his wives namely;

1st Wife – Atai Mang'oli

Alfred Wanyama – son

Achi Waswa Mang'oli – son

Francis Maelo Mang'oli – son

Peter Wafula Mang'oli – son

Nelson Juma Mang'oli – son

Jane Namukuru Mang'oli – daughter

2nd Wife – Pascilisa Nekesa

Beatrice Nabangala Mang'oli – daughter

Violet Nelima Mang'oli – daughter

Rose Tindi Mang'oli – daughter

Christine Machuma Mang'oli – daughter &

M S – son

3. From the record it is not in dispute that the deceased owned land known as E. Bukusu/W. Sang'alo/594 measuring 51.9 acres and from the evidence of both sides there is consensus that during his life time the deceased sold 5 acres of the land to one **Julius Makhino Karani (DW2)** which land the said Julius has occupied; cultivated and built a church for many years, secondly that before his demise the deceased had divided the remainder of his land to all his sons and the 6th son being the child of his second wife and a minor had his portion taken care of by his mother.

4. Having settled the above what is in issues are the proportions each of the Beneficiaries are entitled to; whether the 2nd widow and her son were to share one portion or whether each one had a specific share or not, and whether the daughters were given any shares.

5. Parties agree that the deceased had shared out portions to each of the sons. The sons of the 1st house contend that the 6th son's share is big enough to accommodate the daughters of that home and the surviving widow. The only daughter of the 1st house lays no claim to the Estate. The boundaries were demarcated and are known. I will therefore direct that the two houses jointly engage and meet the cost of the Surveyor in order to establish the boundaries and specific acreage of each person.

6. From the evidence of the 5th and 6th Objector the daughters of the 2nd house were to benefit from their mothers share, though no concrete evidence that the 6th Objector got a share was adduced. What the Court received were mere allegations which the Court cannot rely on however it is up to the 5th Objectors to share his portion with his mother and siblings if he so wish but it is abundantly clear that the deceased did not divide any land to the daughters from either side. The widow was holding her son's share in trust and has all along continue to live there.

7. The daughters did not raise any objection with the deceased when he distributed his land during his life time and since parties have since 1976 – 41 years ago been in occupation and have since sold to third parties, there would be no justification after so many years to upset the **status quo**.

8. In the circumstances taking Judicial notice that several of the beneficiaries have sold

a). I direct that all the sons jointly engage a surveyor and meet the costs of establishing the boundaries and specific acreage for each one of them.

b). the report be filed in Court within 30 days to allow confirmation of grant.

c) thereafter each son will be at liberty to transfer to his buyers.

9. On receiving the report from the Surveyors, the Court will proceed to ascertain the shares as distributed for purposes of the confirmed grant.

10. Each party to bear his/her costs.

DATED and DELIVERED at BUNGOMA this 23rd day of November, 2017

ALI-ARONI

JUDGE