



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

PROBATE & ADMINISTRATION CAUSE NO.35 OF 2012

IN THE MATTER OF THE ESTATE OF SAMSON WANYONYI MUKASA

alias WANYONYI MAKHANDA MUKASA.....DECEASED

AND

MARGARET N. WANYONYI.....1ST PETITIONER/RESPONDENT

FEBE NASIMIYU.....2ND PETITIONER/RESPONDENT

VERSUS

NYONGESA MUKASA.....1ST OBJECTOR

DAVID B. WANYONYI.....2ND OBJECTOR

RULING

1. The Deceased herein Samson Wanyonyi Mukasa alias Wanyonyi Makhandanda Mukasa died Intestate at Lutasio; South Kulisuru on the 2nd of July, 1990. His was survived by 1 widow and 6 children as follows;

- i). Margaret N. Wanyonyi – widow
- ii). Febe Nasimiyu – daughter
- iii). Jane Nafula – daughter
- iv). Beatrice Nanyama – daughter
- v). Joan Wanyonyi – daughter
- vi). David Wanyonyi – son
- vii). Stephen Wanyonyi – son

2. The only asset of the Estate is land parcel No. Malakisi/South Kurisuru/556 measuring 14.8 hectares.

3. The widow **Margaret N. Wanyonyi and Febe Nasimiyu** are the Administrators of the Estate. Pending now is confirmation and distribution of the Estate of the deceased. Two persons objected to the proposed mode of sharing by the Administrators the said persons are David Wanyonyi, a son and Nyongesa Mukasa, a nephew.

4. The issue raised by the son David Wanyonyi seems to have been resolved by a consent filed by the family members including the son dated 19th May, 2017.

5. The **1st Objector Nyongesa Mukasa** in the consent was allocated 1 acre but he was not satisfied with the said proposal. In his affidavit in objection he proposed to get 4 acres, in line with a decision of the clan that was made on 12th September, 2013 where he had made a case claiming to have assisted bring up the deceased children and in the e sernation of the deceased shamba whenever 3rd parties encroached.

This to him gives him a sense of entitlement.

6. The Law that governs the Estate of an intestate who leaves behind a widow and children is Section 35 of the Law of Succession act which states that, the surviving spouse is entitled to all personal and household effects absolutely and a life interest in the whole residue of the net intestate, the surviving spouse during the continuous of the life interest may gift any part of the capital net Estate to the surviving children and after the death of the surviving spouse the property then devolves to the surviving children in equal shares.

7. Having considered the Law the claim by a nephew because he lived with the family of the deceased or assisted the deceased reclaim his land from third parties does not entitle the first Objector's claim. He has no colour of right especially against the background that his own father gave him his share of his property as was testified by his own brother and which he admitted.

The claim is not known in Law and is unreasonable.

8. Having stated the above nevertheless, I find the proposal by the deceased family that proposes to allocate the Objector an acre probably for appreciation of his long stay with the family and to bring an end to this dispute, to be a generous gift as he has no interest in the Estate known to Law.

9. The family having filed a reasonable consent I proceed to adopt the same as order of this Court as I dismiss the Objection.

A confirmed grant do therefore issue based on the said consent.

Costs in the cause.

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

ALI ARONI

JUDGE