



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**SUCCESSION CASUE NO. 62 OF 1998**

**IN THE MATTER OF THE ESTATE OF ALEXANDER PAPA SEMI----DECEASED**

**AND**

**ANJELINE PAPA -----PETITIONER**

**VERSUS**

**DAVID PAPA**

**PHELISTER NDUBI PAPA**

**KIZITO SEME-----RESPONDENTS**

**RULING**

1. This Decision is on Distribution of the estate of Alex Papa Seme (Deceased) who died intestate on 21<sup>st</sup> May 1988. This Decision is necessary because there is a disagreement between Anjeline Papa (The Applicant) and David Papa (The Petitioner). The property to be distributed is the land parcel known and described as South Teso/Amukura/1725(hereinafter also the Estate Land).

2. The Applicant was one of 9 (nine) wives of the Deceased while the Petitioner was a son. Each have made separate proposals on distribution. The Petitioner proposes distribution as follows:-

- |                       |           |
|-----------------------|-----------|
| a) David Etyang Ikaal | 1 acre    |
| b) Lawrence Wafula    | 1 acre    |
| Florence Akumu        |           |
| c) Fred Opeti         | 1 acres   |
| d) John Osere Esike   | 4 ½ acres |
| e) Gerald Anyir Obulo | 1 acre    |
| f) Gaitano Opondo     | 6 acres   |
| Emai Opete            |           |

- |  |         |
|--|---------|
| g) Ibrahim Idiama Olawo                        | 1 acre  |
| h) Dic Simon Omukaga                           | 7 acres |
| i) Edwin Makokha Obulo                         | 1 acre  |
| j) Fredrick Musungu                            | 1 acres |
| k) Sebastian Ongesa Epalie                     | 2 acres |
| l) Forence Makokha                             | 1 acre  |
| m) Leonard Wabwire                             | 3 acres |
| n) Papa Primary School                         | 3 acres |
| o) Community Health Centre                     | 2 acres |
| p) Christopher Barua                           | 4 acres |
| q) Angeline Papa to get the remaining portion. |         |

Explicit in this proposal is that a substantial portion of the Estate is proposed to go to third parties who are said to have purchased portions of land from the Deceased in his life time.

3. Of the 16 or so Third Parties the Applicant recognizes all but Tadeo Ongesa and Emodo Ikaal. It is then her contention that remainder of the land being 21 acres be distributed as follows:-

- 13 to herself
- 2 acres to her daughter Everlyne
- 6 acres to the child of her co-wife by the name Awino.

4. The proposal of the Applicant was informed by her position that, in his lifetime, the Deceased had settled his sons with the following intervivos gifts:-

- |                                   |   |                         |
|-----------------------------------|---|-------------------------|
| a) David Charles Papa             | - | South Teso/Amukura/1297 |
| b) Peter Seme Sibai               | - | South Teso/Amukura/1300 |
| c) Alfred Seme C/O Alexander Papa |   | South Teso/Amukura/1478 |
| d) Peter Papai Papa               | - | South Teso/Amukura/1303 |
| e) Nicholas Obulo Papa            | - | South Teso/Amukura/1741 |

5. The proposal by the Applicant is supported by one Janerose Papa who is a daughter of the Deceased born to his wife Francisca Awino. There appears to be a small difference on what should go to her. She claims 7.0 acres while the Applicant offers her 6 acres.

6. The Petitioner has insisted on getting a significant portion of the Deceased Net Estate as it was his stand that he had not benefitted from any intervivos gift as claimed by the Applicant. It was his repeated assertion that he purchased parcel No. 1297 from his own resources. The Petitioner may however not have been able to sustain that position because of what his very own witness Peter Papa Seme (Peter) told Court. Peter is the son of the Deceased and a brother to the Petitioner. It was his evidence that in his lifetime the Deceased had given the following gifts to his 6 sons.

South Teso/Amukura/1300            Peter Seme Sibai

South Teso/Amukura/1303/1304   Petro Papa & Alexander Papa

South Teso/Amukura/1241        - Nicholas papa Obulo

South Teso/Amukura/1478       - Alfred Seme

South Teso/Amukura/1297       - David Charles Papa

7. There is reason for me to believe that the Deceased had made intervivos settlement to his sons. I also hold and find that the Applicant together with her daughter Everlyne and Janerose are entitled to the Estate of the Deceased. In considering the Distribution of an Intestate Estate, a Court may take into account of any advancement or other gifts made to the Dependants during the lifetime of the Deceased. Section 28(d) provides as follows:-

**“In considering whether any order should be made under this part, and if so what order, the Court shall have regard to:-**

**a) .....**

**b) .....**

**c) .....**

**d) Whether the Deceased had made any advancement or other gift to the Dependants during his lifetime.”**

8. After I consider that there is a list of undisputed purchasers, the Estate now available for Distribution would be a land parcel of 21 acres. This is the land which the Applicant, her daughter and Janerose lay a stake. The only person seriously challenging this is the Petitioner who received a lifetime gift of 21.2 (8.6 hectares) from the Deceased. I take a view that when that gift is compared with the remainder of the Deceased’s Estate, then a plausible determination is that the Petitioner’s gift was a reasonable settlement to him and he need not get anything more from the Deceased Estate. That is the determination I make. The Distribution that commends itself to me is as follows:-

a) Janerose Papa            7 acres of South Teso/Amukura/1725

b) Everlyne Papa            - 7 acres

c) The Applicant            - 7 acres (to be held for life and to devolve upon Everlyne upon her death).

9. In addition, all the purchasers whose portions are recognized by both protagonists shall be included in the list for Distribution. The purchasers not recognized by the Applicant will have to stake their claim before another forum. They will have to take legal advise on their possible cause of action.

10. I make no order to costs. The parties are son and step-mother.

Dated, signed and delivered this 16<sup>TH</sup> day of MAY 2016

**F. TUIYOTT**

**J U D G E**

In the presence of :-

Orwasa- C/Assistant

Petitioner in person

N/A- for Respondents