



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**SUCCESSION CAUSE NO. 142 OF 2001**  
**IN THE MATTER OF THE ESTATE OF GABRIEL AYEKHA MUSIOMI**  
**(DECEASED)**  
**AND**  
**IN THE MATTER OF AN APPLICATION BY CATHERINE ALUBAYI AYEKHA**  
**AND GORDON WITABA AYEKHA .....PETITIONERS**  
**VERSUS**  
**ERNEST SHIMWATI AYEKHA**  
**SIEPA MUSIOMI**  
**J U D G M E N T**

**Introduction**

1. From the papers filed herein the deceased Gabriel Ayekha Musiomi died on 13.10.1998 at the relatively young age of 74 years. He was survived by his wife Catherine Alubayi Ayekha (now deceased) and two sons Gordon Witaba Ayekha and Ernest Shimwati Ayekha. He was also survived by a daughter in law, Siepa Musiomi Ayekha, the wife to the deceased's son known as Josephat Musiomi. The deceased left behind 3 parcels of land;-

- a) Isukha/Lukose/798 Measuring 0.2 Ha
- b) Isukha/Lukose/54 Measuring 1.0 Ha and
- c) Isukha/Lukose/193 Measuring 0.49 Ha

2. Catherine Alubai Ayekha and Gordon Witaba Ayekha applied for and were issued with Grant of Letters of Administration on **09/10/2001**, and by the summons dated 04/07/2002, the petitioners sought to have the Grant confirmed. It was proposed to distribute the deceased's estate as follows;-

- a) LR No. Isukha/Lukose/798 to Catherine Alubai Ayekha as same had been so given by deceased before his death.
- b) LR. No. Isukha/ Lukoswe/54 to be shared equally between Ernest Shimwati Ayekha and Gordon Witaba Ayekha. This had been done by the deceased before death.

c) LR. No. Isukha/Lukose/193 to be shared equally among the following;- Gordon Witaba Ayekha, Ernest Shimwati Ayekha and Siepa Musiomi Ayekha. The same had been so shared by the deceased before death.

3. Before the summons for Confirmation could be heard, Ernest Shimwati Ayekha and Siepa Musiomi filed a protest through the affidavit of protest sworn by Ernest Shimwati Ayekha on **10.12.2002**. The protestors alleged that because the first petitioner was aged, it was not prudent that she continues to administer the deceased's estate. They also objected to the second Petitioner remaining the sole administrator on grounds that he was not an open-door policy person. The protestors at paragraph 9 of the affidavit also stated "THAT I know of my own knowledge that the deceased had given Land Parcel No. Isukha/Lukose/193 to Josephat Musiomi (now deceased)" The protestors did not object to the proposed distribution of land parcel numbers Isukha/lukose/54 and 798, though they protested against the petitioners having all the 3 parcels of land registered wholly in their own names on **19/10/2001** even before the Grant of Letters of Administration intestate was confirmed. In the meantime, efforts to resolve the dispute amicably using clan elders and the local administration were undertaken but no agreement was reached.

4. The protestors proposed distribution of the deceased's estate as follow;-

a) Land parcel No. Isukha/Lukose/193 to the family of the late Josephat Musiomi to be registered in the name of Siepa Musiomi to hold in trust for her children.

b) Land parcel Nos. Isukha/Lukose/54 and 798 to be shared equally between the 2<sup>nd</sup> petitioner – Gordon Witaba Ayekha and the 1<sup>st</sup> objector Ernest Shimwati Ayekha.

### **Hearing of the protest.**

5. On 09/06/2014, the court was informed that Catherine Alubai Ayekha the 1<sup>st</sup> petitioner had since died. The parties advocates consented to have the Grant issued on 09/10/2001 revoked and a fresh grant to be issued in the joint names of Ernest Shimwati Ayekha and Gordon Witaba Ayekha. It was also agreed that land Parcel Isukha/Lukose/54 be shared equally between the new joint administrators based on the demarcation on the ground. Oral evidence was to be taken only on the distribution of Land Parcel Nos. Isukha/Likose/193 and 798.

6. The new or amended grant was subsequently issued to Ernest Shimwati Ayekha and Gordon Witaba Ayekha on 10/06/2014, thus paving the way for taking of evidence on the issue of distribution on land parcels 193 and 798

7. The matter came up a number of times and eventually took off on **23.02.2016**. On that day, the 2<sup>nd</sup> Petitioner, Gordon Witaba disappeared from court on the pretext that he was going to pay court adjournment fees earlier ordered by the court on 24.2.2015

8. Ernest Shimwati testified as PW1. His proposal on distribution was that Land Parcel No. Isukha/Lukose/193 should devolve to the family of the late Josephat Musiomi while Land Parcel No. Isukha/Lukose/798 should be shared equally between himself and Gordon Witaba Ayekha. PW2 Elisieba Mmbayi Musiomi alias Siepa Musiomi concurred with PW1 on the proposed distribution stating that she was satisfied with her family getting Land Parcel No. Isukha/Lukose/193.

### **Determination**

9. From the evidence, there is no dispute on how Land Parcel Nos. Isukha/Lukose/193 and 798 should be distributed; land parcel Isukha/Lukose/54 was distributed by consent recorded before Chitembwe- Judge on 09.06.2014. In the circumstances, I make the following orders concerning distribution of land parcel Nos. Isukha/Lukose/193 and 798.

a) Land parcel No. Isukha/Lukose/193 to Elisieba Mmbayi alias Siepa Musiomi wholly to hold in trust for her children with a life interest to herself.

b) Land parcel No. Isukha/Lukose/798 to be shared equally between Ernest Shimwati Ayekha and Gordon Witaba Ayekha.

10. A certificate of confirmation shall issue in terms of the above. Regarding costs, the parties shall bear their respective costs since they are all family members.

Orders accordingly

Judgment delivered, dated and signed in open court at Kakamega this 18<sup>th</sup> day of August 2016

**R. N. SITATI**

**JUDGE**

In the presence of;-

Mr. Osongo (absent).....For Objectors

Mr. Ombaye for Amasakha.....For Gordon Witaba Ayekha (2<sup>nd</sup> Petitioner)

Mr.Lagat.....Court  
Assistant