



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**SUCCESSION CAUSE NO. 551 OF 2011**

IN THE MATTER OF THE ESTATE OF KUNYUSA IVULU (DECEASED)

1. ALEXANDER KIETI KUNYUSA
2. KENNEDY KITHEKA MUTISYA .....APPLICANTS/PETITIONERS

**RULING**

1. The application dated 26/4/2013 seeks orders that the grant of Letters of Administration Intestate issued to **Alexander Kieti Kunyusa** and **Kennedy Kitheka Mutisya** on 28<sup>th</sup> September, 2012 be confirmed.
2. According to the affidavit in support, the deceased was survived by two daughters and three sons who are enumerated as follows:-
  - a. **Teresia Mulekyo Salu** – **Daughter**
  - b. **Vincent Kyenzi Kunyusa** – **Son**
  - c. **Alexander Kieti Kunyusa** – **Son**
  - d. **Richard Kyaka Mweu** – **Son**
  - e. **Maricela Nthenya Mutisya** – **Daughter**

3. The proposed distribution of estate is reflected as follows:-

**A.**

- i. **Land title No. Kangundo/isinga/1099-1.160 Acres**
- ii. **Land Tile No. Kangundo/Isinga/1099-0427 Acres** Teresia Mulekyo Salu
- iii. **Land Title No. Kangundo/Isinga/1099-0.170 Acres**

**B.**

- i. **Land Title No. Kangundo/Isinga/1099-0712 Acres**
- ii. **Land Title No. Kangundo/Isinga/1176-0.233 Acres** Vincent Kyenzi Kunyusa
- iii. **Land Title No. Kangundo/Isinga/1099-0.080 Acres**

**C.**

- i. **Land Title No. Kangundo/Isinga/1099-0.456 Acres**
- ii. **Land Title No. Kangundo/Isinga/1176-0.140 Acres**
- iii. **Land Title No. Kangundo/Isinga/1176-2.449 Acres** Alexander Kieti Kunyusa
- iv. **Land Title No. Kangundo/Isinga/1099-0.095 Acres**

**D.**

- i. **Land Title No. Kangundo/Isinga/1176-0.491 Acres**
- ii. **Land Title No. Kangundo/Isinga/1176-0.140 Acres**
- iii. **Land Title No. Kangundo/Isinga/1176-1.071 Acres**
- iv. **Land Title No. Kangundo/Isinga/1099-0.114 Acres**

Richard Kyaka Mweu

**E.**

- i. **Land Title No. Kangundo/Isinga/1176-0.166 Acres**
- ii. **Land Title No. Kangundo/Isinga/1645-0.600 Acres**
- iii. **Land Title No. Kangundo/Isinga/1108-0.100 Acres**

Maricela Nthenya Mutisya

**F.**

- i. **Land Title No. Mavoko Town Block 12/872 - 5 Acres** Geoffrey Kithuka Mwangangi

- 4. Annexed to the affidavit is a signed consent on the mode of distribution.
- 5. One of the beneficiaries, **Teresia Mulekyo Salo** has protested to the proposed confirmation of the grant. The said beneficiary's complaint is that she was not consulted on the distribution of the estate. That she did not sign the annexed consent and the signature purported to be hers is a forgery. That one beneficiary by the name **Francis Mutisya Kunyusa** has been left out of the schedule of distribution. The protestor is also apprehensive that the proposed schedule of distribution may result in the relocation of some of the beneficiaries from the portions of land where they have put up their homes. It is further contended that the distribution of the property is unequal in that one **Alexander Kieti Kunyusa** has been favoured.
- 6. In response to the affidavit of protest, it is averred by **Alexander Kieti Kunyusa**, one of the Administrators that he will hold in trust the share of the beneficiary by the name **Francis Muithya Kunyusa** who is critically ill. It is further stated that no beneficiary will be relocated from the portions of land where they have settled.
- 7. The protest was heard by way of written submissions which I have duly considered.
- 8. From the outset, it has come out clearly that the administrators have concealed material facts from the court. The list of the beneficiaries has clearly omitted the name of **Francis Muithya Kunyusa** who is said to be critically ill. If the Administrator by the name **Alexander Kieti Kunyusa** is to hold in trust the share of the said **Francis Muithya Kunyusa**, that position is not reflected in the schedule of distribution.
- 9. It is also noteworthy that the Chief's letter makes no mention of any daughter of the deceased. Reflecting the daughters in law as daughters of the deceased is therefore misleading. If the husbands through whom the daughters in-law are beneficially entitled to the estate of the deceased passed on, the correct position ought to be reflected.
- 10. Another material fact that has been concealed from the court is the position of **Geoffrey Kithuka Mwangangi** who is reflected in the schedule of distribution. It is noted that the said **Geoffrey Kithuka Mwangangi** is one of the survivors of the deceased. It is further observed that there are no liabilities reflected in the estate of the deceased in the form P & A 5.
- 11. On the question of relocation, although there are assurances that nobody will be relocated, to allay this fear the administrators could have gone a step further and come up with a sketch plan of the proposed subdivision or follow the demarcations on the ground, if there are any.
- 12. With the foregoing, the summons for confirmation fails. Since the parties are in agreement on most of the issues, let them tighten the bolts and nuts as pointed out herein above. The parties can file a consent and if they fail to agree, the administrators to file a fresh summons for confirmation.

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**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 29<sup>th</sup> day of April, 2015**

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**B. THURANIRA JADEN**

**JUDGE**