



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO. 311 OF 2011

IN THE MATTER OF THE ESTATE OF PETER MUSINDI LWIMBO ...DECEASED

TERESINA M. MUSINDI PETITIONER

V E R S U S

LAURENCE M. MUSINDI OBJECTOR

R U L I N G

The late **PETER MUSINDI LWIMBO** died on the 21.5.2003 aged 87 years old. He was survived by six children namely- *Getrude Musanga, Vincent Likatata, Maxmila L. Musindi, Anjelina Musindi, Teresina Musindi and Lawrence Musindi*. The only estate is plot number **KAKAMEGA/SHISWA/48** measuring 2.20 Ha. The beneficiaries did not agree on the mode of distribution and parties adduced oral evidence.

Lawrence Musindi objected to the distribution and testified that his main contention is that the deceased had sold one acre to one **FESTO** and he is the one who refunded **Festo** the purchase price of **KShs.33,500/=**. He would like to be given that one acre before the estate is distributed. He also contends that his sisters are married and have property from their respective husbands. **PW2 LUKA MULEMBI** is a neighbor and testified that the deceased sold part of the land to Festo who is now deceased. Lawrence repaid the money in the year 2000 and is the one who is using that part of the land. According to his evidence the mother to the parties herein is his sister. He saw the objector paying back the sum of KShs.33,500/=.

Vincent Likatata Paul is the deceased grandchild. His only prayer is that he gets his father's share. He testified as **DW1** and would like the estate to be distributed. **Anjelina Musindi** was **DW2** and is the deceased daughter. She would like the estate to be distributed amongst the 6 surviving children.

From the evidence on record it is clear that there is no dispute as to the beneficiaries of the estate. The only dispute is regard to the one acre the objector is claiming. From the line of cross-examination by the petitioner it is established that the deceased had sold part of his land but the family late on objected and a refund was made. I am satisfied that it is the objector Lawrence who repaid Festo. I find that Lawrence is entitled to that portion of land as he is the one who refunded Festo. The petitioner had proposed to distribute the estate equally whereby each of the six beneficiaries was to get 0.36 Ha. I do order that deceased estate be distributed as follows:-

Plot Number KAKAMEGA/SHISWA/48

- | | | |
|-------------------------------|---|---------------|
| 1. <i>Lawrence K. Musindi</i> | - | <i>1 acre</i> |
| 2. <i>Lawrence K. Musindi</i> | - | |

- | | | |
|-------------------------------|---|----------------------|
| 3. <i>Getrude Musanga</i> | - | |
| 4. <i>Vincent Likatata</i> | - | <i>to share</i> |
| 5. <i>Maxmilla L. Musindi</i> | - | <i>the remainder</i> |
| 6. <i>Anjelina I Musindi</i> | - | <i>equally</i> |
| 7. <i>Teresina M. Musindi</i> | - | |

Lawrence Musindi shall be at liberty to combine his two portions of land as hereinabove indicated. Each party to meet his/her own costs.

Delivered, dated and signed at Kakamega this 27th day of February 2013

SAID J. CHITEMBWE

J U D G E