



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KAKAMEGA**

**SUCCESSION CAUSE NO: 441 OF 1999**

**IN THE MATTER OF THE ESTATE OF SIMEON LIVONDO  
AGOSA.....DECEASED**

**AND**

**PETER LIVONDO AGOSA.....PETITIONER**

**VERSUS**

- 1. NAOMI MFWOKO AGOSA**
- 2. ELIZABETH MWENESI.....OBJECTORS**
- 3. FLORA LIVONDO**

**JUDGEMENT**

The late Simon Livondo Agosa died on 17<sup>th</sup> July 1996. The deceased had eleven children, eight daughter and three sons. The petitioner is the deceased's son while the objectors are the deceased's daughters. All the children are of the same mother.

The objector's case is that their late father had two plots namely **NYANG'ORI/KAPSOTIK/230** measuring 0.9 Hectares and **NANDI/KABWARENG/21** measuring 8.6 acres. PW1, Naomi Simon Agosa testified that Paul and Peter, her brother use the Nandi plot while the daughters live on the Nyango'ri plot where their parents use to reside. It is her further evidence that the deceased helped the two brother to purchase the Nandi plot. The third brother, Arthur bought a plot in the neighborhood of the Nyango'ri plot and does not live on plot number 230. However, during the pendency of this suit, the petitioner rent his son to build on plot number 230 PW1's proposed mode of distribution is to have plot number 230 distributed to the unmarried daughters. She contends that some of the married daughters are not claiming any land but are colluding with her brothers.

The evidence of PW2, EDZINA MASITSA is similar to that of PW1 she testified that the deceased died in 1996. Three out of the eight daughters are not married. The deceased informed the daughters that they are to live at the homestead. DW 2 is relative who is older than the deceased herein.

On his part, the petitioner testified that the Nandi plot did not belong to the deceased. The deceased only left plot number 230. His proposed mode of distribution is to have plot number 230 divided into four parts. Each son getting 0.23 hectares and the daughters getting one portion of equal measurement. The clan made the distribution in the above terms. The petitioner lives on another plot near plot number 230. According to him the Nandi plot was bought by himself and his brother Paul Chagame for Ksh 72,000/=

DW2 FRIDA KADEZIA is the deceased's daughter. Her evidence is that their late father informed them that the land be divided into four portions. Each son to get one portion. She concurs with the evidence of

DW1, the petitioner.

The main issue for determination is the distribution of the deceased's estate. Two issues arise namely, what constitutes the deceased's estate and how should it be distributed.

With regard to the first issue, the objectors contend that the Nandi plot was bought by their two brothers jointly with their father. Their father contributed Khs 72,000/=. The objection annexed a document dated 15<sup>th</sup> March 1986 indicating how the Nandi plot was divided equally between Paul Chagemu and Peter Livondo in the presence of the deceased.

The petitioner contends that the deceased did not contribute towards the purchase of the Nandi plot. He produced a Sale Agreement dated 16/3/1985 indicating that it was himself who bought the land together with his brother Paul although Paul's name is not on record.

From the evidence on record, I do find that the deceased participated in the purchase of the Nandi plot. PW2, an elderly woman informed the court that it is the deceased who bought the Nandi plot.

The land was bought in 1985 and divided equally between the deceased's two sons in 1986. The two sons settled in Nandi and have no houses on plot 230. Although the petitioner does not live on the Nandi plot, he testified that he cultivates half that plot.

On the issue of distribution of the estate, I do find that the proposal by the petitioner to divide the land into four portions is quite unfair to the objectors. **Section 42 of the Law of Succession Act** allows for previous benefits to be taken into account. From the evidence of PW1, the 3<sup>rd</sup> son, Arthur also benefited from the deceased when they bought a plot jointly. Although the plot was later sold to Peter, Arthur was the beneficiary and he bought land elsewhere.

The objectors swore a joint affidavit on 15/9/2000 indicating how they propose to have plot 230 distributed. Paragraph of thereof reads as follows;-

**“That our view is that this land be divided into two (2) portions where one portion would be registered in the names of the deceased's daughters and the other in the names of the sons”**

I do find that the three objects together with their deceased sister, Flora to get half share of Plot Number 230 and the remaining beneficiaries to get the other half share of the plot. Since there is no dispute in relation to the Nandi plot, I will not distribute it but will leave it for the benefit of the two sons.

In the end, I do find that the objectors have proved their case to the required standard Plot number **NYANGO'ORI/KAPSOTIK/230** shall be distributed as follows:-

1. **NAOMI MFWOKO** Half share for their benefit and the **ELIZABETH MWENESI** and Flora's children and the other daughter living on the land.
2. **PETER LIVONDO AGUSA-** Half share for his benefit and the benefit of the other beneficiaries.

Since the parties are from the same family, each will meet his/her costs. A certificate of confirmed grant shall be issued in the names of **NAOMI MFWOKO** and **ELIZABETH MWENESI** who shall effect the above distribution of the estate.

Dated, signed and Delivered at Kakamega this 26<sup>th</sup> day of February 2014.

**SAID J. CHITEMBWE**

**JUDGE**