



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 92 OF 2011

IN THE MATTER OF THE ESTATE OF PETER MUKUHA KAGO (DECEASED)

SIMON GASHWE MUKUHA.....PETITIONER

VERSUS

NEWTON KAGIRA MUKUHA.....OBJECTOR

RULING

This Ruling relates to the Summons dated 2nd November 2012 (*the Application*) by Newton Kagira Mukuha – (*the Objector*) in which the Objector sought the following orders against Simon Gashwe Mukuha (*the Petitioner*) namely -

1. that pending hearing inter partes and determination of this Application a temporary injunction be issued restraining the Petitioner, either by himself, servants, employees and/or authorized agents from howsoever inter-meddling with the deceased estate herein, and specifically from interfering with NAIVAS LTD shares owned by the deceased,

2. that the costs of the application be provided for.

2. The Application was supported by the Affidavit of the Objector sworn on 2nd November 2012 and the grounds that -

(a) the Petitioner herein and/or his agents have unlawfully embarked on selling/disposing NAIVAS LTD shares owned by the deceased herein in total exclusion of other beneficiaries of the estate;

(b) that the Petitioner has resolved to sell the shares owned by the deceased;

c. that the Petitioner's actions constitute acts of interference with the deceased's estate and unless enjoined by order of court, the estate would stand completely wasted;

(d) the Petitioner's acts are prejudicial to the Objector.

3. The Application was certified urgent by order of court made on 5th November 2012, and directed to be heard on 19th December 2012. Pending the said hearing date Objector appointed the firm of Ondieki & Ondieki Advocates who filed on 19th November 2012 a Supplementary Affidavit sworn on 15th November 2012. In this Supplemental Affidavit the Objector depones that the Petitioner is unfit to

administer the estate of the late Peter Mukuha Kago because the Petitioner is fraudulent to wit -

- 1. the Petitioner took shs 1,000,000/= on diverse dates in the year 2009.**
- 2. On 30th April 2009, the Petitioner took another Shs 2,000,000/= from the estate, and**
- (3) On 14th July 2009, he caused the Objector to purchase a banker's cheque for shs 355,765/= for Kenindia Insurance Company Ltd (again from the estate?)**
- (4) On 12th August 2009 the Petitioner took another Ksh 2,000,000/= (from the estate?)**
- (5) the Petitioner discloses a networth of shs 100,000/= yet the Petitioner knew the estate is worth over Ksh 15,000,000/=**
- (6) that he contributed no less than 20% of the (capita) of NAIVAS LTD, and the Petitioner wants to defraud him of his contribution.**

4. Upon service of the Objection, the Petitioner filed on 15th November 2012, a Replying Affidavit sworn on the same day and in which the Petitioner acknowledged that the deceased had 10,000 ordinary shares or 20% of the capital in NAIVAS LTD, and which shares were to be distributed in accordance with the Will of the deceased in the following manner -

- (1) Simon Gashwe Mukuha – 4%
 - (2) David Kimani Mukuha – 4%
 - (3) Grace Wambui Mukuha – 6%
 - (4) Linet Wairimu Mukuha – 6%
- 20%

5. The Petitioner deponed that the Objection is totally unmerited as the Directors of NAIVAS LTD had not resolved to sell the shares of the deceased.

6. In a quick rejoinder to the Petitioner's Replying Affidavit, the Objector filed on 26th 2013 another Further Supplementary Affidavit sworn on 15th May 2013 and in which he referred to a family meeting convened by their late father and attended by the members of the family, and in which their late father advised them that unity was strength. The Objector deponed that following their father's advice, they made financial contributions each according to his ability -

- (1) Peter Mukuha Kago – Ksh 30,000/= ----- 30%
- (2) Grace Wambui Mukuha – Ksh 25,000/= -----25%
- (3) Newton Kagira Mukuha – Ksh 20,000/=-----20%
- (4) Linet Wairimu Mukuha – Kshs 15,000/= -----15%
- (5) David Kimani Mukuha – Kshs 10,000/=-----10%

7. The Objector deponed that the Petitioner made no contribution, as he had lost his job, and had no money. The Objector deponed that with the said contributions, the family opened their first store at Rongai and called it RONGAI SELF SERVICE STORE, and progressively opened other branches in Elburgon and Naivasha, with himself in charge of the Rongai Branch and the Petitioner in charge of the Branch at Elburgon.

8. The Objector deponed that he does not know when the Petitioner and David Kimani Mukuha decided to register the company, and take 50% of the share capital of the company until the year 1996 when their late father again summoned another family meeting, and he was given the Branch at Elburgon together with a house. Ultimately the Objector depones that he is a shareholder of NAIVAS LTD and a beneficiary in the estate of his late father, and that the Petitioner cannot exclude him as an elder son, as this would be contrary to Kikuyu culture. The Petitioner and the Board of Naivas cannot sell the shares of NAIVAS LTD to MASSMART of South Africa without involving him.

9. On 10th July 2013 the Objector filed another Notice of Motion dated 9th July 2013, seeking essentially the same orders as in the Summons the subject of this Ruling.

10. In a quick rejoinder, the Petitioner swore a Replying Affidavit on 15th August and filed it the same day. The Petitioner deponed that the Objector had never been either a Director or a shareholder of NAIVAS LTD, and that the instant cause being a succession matter has absolutely nothing to do with NAIVAS LTD, a limited liability company and a distinct and separate legal entity with its directors and shareholders, and that it is not a family business.

11. In his Further Affidavit sworn and filed on the same day, 15th August 2013, in response to the Objector's Applications of 2nd November 2012 and 9th July 2013, the Petitioner depones that -

(a) there was no meeting on 29th December 1989, no family member attended. No minutes of such meeting. The Objectors allegations are all false.

(b) that Rongai Self-Service Stores Ltd was incorporated on 25th May 1993 and the Applicant was never and has never been either a director or shareholder.

c. that is the Petitioner and his other brother David Kimani Mukuha that managed the daily affairs of the store at Rongai until 1994 when they decided to involve other members of the family in gainful employment at RONGAI SELF-SERVICE STORES LTD and that subsequently the Objector was employed to run the store at Rongai, while he, the Petitioner and his sister Grace Wambui Mukuha, were to run the Elburgon Stores, while David and Linet were to manage the Naivasha Branch.

d. that the Objector wantonly squandered the company assets and misappropriated proceeds from the Rongai Branch to the tune of shs 230,000/= which led to his arrest.

(e) that in a meeting held on 31st October 1996, and attended by all members of the family and their late father, the family agreed to avoid squabbles orchestrated by the Objector, the Rongai Branch was left entirely for the Objector's use and enjoyment without involvement of any other member of the family. The Objector's claims to the contrary are untrue.

(f) that he has worked harmoniously with all members of the family and he never surreptitiously transferred the business to himself. It has been the Objector who has been belligerent despite the family's concerted efforts to assist him.

(g) that out of sheer good will, after he had run down the business at Rongai, he, the Petitioner, and other family members, assisted the Objector to set up a supermarket which he named GREENMATT SUPERMARKET situate in KAYOLE ESTATE Nairobi – which the Objector runs exclusively from other siblings.

(h) that as a result of the foregoing, the Petitioner and his brother, David Kimani Mukuha and other family members decided to open another independent company NAIVASHA SELF SERVICE STORES LTD, which was rebranded NAIVAS LTD in the year 2007.

i. that Milimani Commercial Court – HCCC No. 23 of 2013 arose from a claim for the goods supplied to the Objector by NAIVAS LTD to the tune of Sh. 46,361,264.65 which the Objector paid, leaving a balance of shs 12,102,918.12 which remains unpaid to-date that the Objector is a stranger to NAIVAS

LTD, being neither a shareholder nor a director. He has never contributed to or been part of the operations of NAIVAS LTD and that consequently, his averments to the contrary are baseless and untrue.

12. In the flurry of these Applications and Affidavits the Objector filed a Notice to Act In Person dated 8th April 2014. On the heels of that **Notice to Act in Person** the Objector filed another application dated First July 2014 for leave to file yet another affidavit. That application and the Affidavit was subsumed in the evidence of the Objector given on 17th July 2014. Lest the Objector might think that his Further Affidavit was not considered, I confirm that his Affidavit having been filed with the application for leave to file the same has been considered. I have perused it and it adds nothing new to what the Objector has said in the previous affidavits and in his evidence given on 17th July 2014.

13. Because of the complex and deeply ingrained dispute over the ownership of NAIVAS LTD, and the Objector's insistence that **“no distribution (of their late father's estate) without determination of the ownership of NAIVAS LTD,”** I made an order on 15th May 2014 that the claims and counter-claims as to the ownership of NAIVAS LTD, the summons dated 2nd November 2011 be heard first, and hence this Ruling.

THE DETERMINATION

14. I have deliberately set out at length the claim and counter-claims as to the ownership of the company called NAIVAS LTD. The Objector claims that the company was founded by their late father Peter Mukuha Kago, and for that reason he is entitled to a share of the company. The ownership of a company limited by shares is both a question of fact, and also a question of law. It is a question of fact as to who is the registered owner of the shares in the company. The question of law determines the consequences of that ownership. In that regard the Petitioner called the Registrar of Companies to shed light as to the registration of NAIVAS LTD, its shareholding and directorate.

15. PW1 was a State Counsel attached to the Officer of the Registrar of Companies. He brought along the entire original file of NAIVAS LTD. He testified as follows -

- (1) Incorporation – 24.07.1999 as Naivasha Self-Service Stores Ltd.,
- (2) Subscribers to the Memorandum and Articles of Association were -
 - (a) David Kimani Mukuha
 - (b) Simon Gashwe Mukuha

3. Nominal Capital – Ksh 100,000/= divided into 1,000 shares of ksh 100/= each.

(4) Certificate of incorporation No. C.81909 issued on 24.07.1998.

5. Name changed – by resolution of 18/07/2007 filed on 14/08/2007 to NAIVAS LIMITED.

(6) Certificate of change of name – C81909.

(7) Shareholding remained the same.

(8) Increase of Nominal Share-Capital by resolution of 21/06/2014.

- increased by an additional 4,900,000/= beyond the original capital of shs 100,000/= making total nominal capital of shs 5,000,000/=

9. Each original shareholders were allotted 25,000 shares each beyond the original 500 shares.

(10) From 2004 – 2007 the shareholders remained the same.

16. For purposes of this Ruling what is material is the shareholding from the year, 2007. According to the records held by the Registrar of Companies. According to the evidence of PW1, from the year 2007, new shareholders were introduced to NAIVAS LTD as follows -

1. Simon Gashwe Mukuha transferred 10,000 ordinary shares to Peter Mukuha Kago, effective 1.11.2007.
2. David Kimani Mukuha transferred 7,500 ordinary shares to Linet Wairimu Mukuha also effective 1.11.2007.
3. David Kimani Mukuha also transferred 5000 ordinary shares to Grace Wambui Mukuha also effective 1.11.2007.
4. Simon Gashwe Mukuha transferred 2500 ordinary shares to Grace Wambui Mukuha effective 1.11.2007.

17. The State Counsel testified that the Annual Return for 2007 dated 14/01/2008 showed the shareholding as follows -

- (1) David Kimani Mukuha held – 12,500 shares
- (2) Simon Gashwe Mukuha held 12,500 shares
- (3) Peter Mukuha Kago held 10,000 shares
- (4) Grace Wamboi Mukuha held 7,500 shares
- (5) Linet Wairimu Mukuha held 7,500 shares

and the Directors remained the same, David Kimani Mukuha and Simon Gashwe Mukuha. The Annual Returns for 2007 to 2010 do not reflect any damage in the shareholding or the directorate.

18. When cross-examined by the Objector PW1 testified that the Registrar is not aware of any agreement prior to registration of a company. The Registrar of Companies, registers and does not interfere with the internal management of a company.

19. PW2, was Simon Gashwe Mukuha, the Petitioner. He testified that he is the current Chairman of NAIVAS LTD, a company started in 1990, a business which they inherited from an uncle, Joram Kamau Kago, which was trading as Magic Super Stores (at Rongai) and Gateway General Stores, and that he and his brother David Kimani Kagwe were employees of their uncle. Both of them were Senior Managers.

20. PW2 testified that their uncle decided to open a *mega supermarket* in Nairobi, he decided to sell the store to them at a discounted price of Ksh 1,000,000/= stock, furniture, and electronics and they were to pay in instalments. It was a gentleman's agreement walk-in-walk-out. He and his brother had a team of fifteen workers. They were successful. They decided to register a company, and called it Rongai Self-Service Stores Ltd, with two shareholders he and his brother, David Kimani Mukuha in equal shares.

21. PW2 also testified that in 1993 their late father, he and his brother, their uncle Joram Kago, and a cousin called Yusuf Kamau decided to expand their business, and needed a team of honest people as there was no software to run supermarkets in those days. They opened a Branch at Elburgon and decided to invite their elder brother Newton Kagira Mukuha (*the Objector*) who he said, was then a vendor-distributor of illicit changaa drink in Tiwan Estate in Kitale to come and become his assistant, as an employee. That branch was under the management of their brother, David Kimani Mukuha, and sister, Linet Wairimu Mukuha – whom they persuaded to leave her nursing job and join the business, all as

employees.

22. PW2 further testified in detail that the business run well between the years 1994, 1995 but in 1995 the Elburgon Branch experienced problems. The Objector removed Ksh 230,000/= for which he could not account. Their late father called a meeting at which it was found that he and the Objector could not work together, and the family resolved to give the Rongai Branch of the business to the Objector, and he the Petitioner, would take over the Elburgon Branch, while his said brother and sister would run the Naivasha Branch of the business. PW2 produced a copy of the family resolution as PEx. 4. The Rongai business was rebranded by the Objector as Newton Kagiri – Mukuha stores. The old sign boards and licences were removed and the company called Rongai Self Service Stores closed.

23. PW2 testified that subsequently thereto, he and his brother formed and had registered – Naivasha Self-Service Stores Ltd on equal shareholding basis of 50:50. After eleven (11) years in Elburgon they moved to Naivasha and closed the Elburgon Branch. Because the brother was energetic he urged him to move to Nairobi.

24. PW2 also testified that because they trusted their sisters Grace and Linet they sold 7,500 shares to each of them and allotted 10,000 shares to their late father.

25. The Petitioner also testified that following an appeal from their mother that they should not leave or forget their brother, the Objector, they found a store in Kayole Estate in Nairobi and opened a store for him but asked him to change and mend his ways. He registered a business, Greenmark Ltd, and they supplied him with goods worth shs 47,000,000/= which he repaid, leaving a balance of shs 12,000,000/= for which NAIVAS Ltd sued him in Nairobi HCCC No. 23 of 2013 and they obtained judgment and a decree P.Ex. 6, but they declined to attach his goods. The Objector still runs his supermarket.

26. Due to rapid expansion, the company was rebranded NAIVAS LIMITED (*as testified by PW1*). The Objector was never a member or shareholder of the company NAIVAS LTD, that the Objector to NAIVAS LTD even a stranger, though he and other members of the family assist the Objector who has refused to work even with own children, and works only with his wife. NAIVAS LTD, employees his three sons.

27. More importantly, PW2 testified that NAIVAS LTD is not a family business. There are ten members of the family including their mother. Only four of them are shareholders of NAIVAS LTD -

- (1) Simon Gashwe Mukuha
- (2) David Kimani Mukuha
- (3) Grace Wamboi Mukuha and
- (4) Linet Wairimu Mukuha

Other members of the family are -

- (1) Teresia Muthoni
- (2) Grace Muthoni
- (3) Newton Kagira Mukuha (the Objector is laying claim to the company)
- (4) Hannah Njeri
- (5) Ruth Wanjiru

28. PW2 also testified that their sister Teresia Njeri has 11 shops in Nairobi, Grace Muthoni has a chain

of ten supermarkets known as **Budget Stores from Meru to Mombasa**. It is only the Objector who is laying claim to Naivas Ltd.

29. This witness also testified that the dispute arose following the demise of their father on 6th May 2010 at Lakeview Estate, Nakuru. By expansion, PW2 testified, they would assist the family members more.

30. When cross-examined by the Objector, PW2 reiterated his evidence in-chief, that they gave the Objector the Rongai business out of the pleading by their father, as indeed everything they had arose from their father's hard work and advice, and that their father could therefore direct them. PW2 disowned any meeting held in December as that is a busy month. He had no knowledge that their sister Grace Muthoni borrowed money from her work place, the National Youth Service. They did not sell but allotted shares to their sisters. The loss of shs 230,000/= was amicably resolved between him and the Objector.

31. On his part, the Objector testified to the contrary. He reiterated the averments in the various Supporting, Further, and Further Supplementary Affidavits already referred to above. He reiterated in particular that though there were no minutes, their father had in December 1989 called them, and told them that is there is strength in unity, and that they should work together.

32. That meeting was followed by another meeting in April of 1990, when those in attendance contributed various sum totaling shs 100,000/= with which to commence a business. Only the Petitioner did not attend or contribute allegedly because he had lost his employment.

33. The Objector also confirmed a further meeting at which the Petitioner circulated a Resolution which they were asked to sign or leave it. He signed it because he was happy, he was being given Rongai Stores to run, as well as a house.

34. The Objector also testified that other than those members granted shares in the company, he was excluded. He also objected to the Petitioner being the sole Administrator of the estate of their late father.

35. When cross-examined, the Objector admitted that he signed the Resolution on the future operations of the family's three stores. Rongai store and a house was given to him, and he accepted by signing the resolution. He acknowledged that he had no documents to show that he was a shareholder of Naivasha Self-Service Stores Ltd. He acknowledged being supplied with goods worth shs 47 million for NAIVAS LTD. He also acknowledged that his children were educated by NAIVAS, they are employed by NAIVAS LTD, and he also acknowledged that his father had only 10,000 shares in NAIVAS LTD.

36. Grace Wambui Mukuha (*the 8th child of Peter Mukuha Kago*), testified as OW2. She corroborated the evidence of the Objector in relation to a family meeting in 1989 and another meeting in 1990, at which funds were contributed with which were started Rongai Self-Service Stores Ltd. She also acknowledged that she is a shareholder of NAIVAS LTD. This witness acknowledged that NAIVASHA SELF-SERVICE STORES LTD was incorporated in 1990, well after the distribution of the branches in Rongai and Elburgon and Naivasha.

ISSUE FOR DETERMINATION

37. I have deliberately set out at length the evidence of the Petitioner and the Objector, keeping in mind that the dispute herein may well not end with this Ruling. When the parties appeared before court, on 15th May 2014, the Objector told the court that there would be "*no distribution*" of their father's estate without determination of the ownership of the company, **NAIVAS LTD**. The question for determination therefore is, who owns the company known as NAIVAS LTD?

38. The Objector insists that the company is a family business and is part of the estate of their late father, Peter Mukuha Kago. The Petitioner testified to the contrary. In this regard the evidence of the Registrar of Companies, through PW1, was very clear. The original subscribers to the Memorandum and Articles of Association of the company were PW2 and his brother David Kimani Mukuha and they each took 50%

of the company's authorized or nominal share-capital. They were also the company's sole directors.

39. Upon the increase of nominal capital from Ksh 100,000/= to Ksh 4,900,000/= the Board comprising the original members resolved to bring in other member of the family as shareholders. These new members were -

- (1) Peter Mukuha Kago – 10,000 shares
- (2) Grace Wamboi Mukuha – 7,500 shares
- (3) Linet Wairimu Mukuha – 7,500 shares

The original members of the company -

- (4) David Kimani Mukuha – 12,500 shares
- (5) Simon Gashwe Mukuha – 12,500 shares

40. Under Section 22 of the Companies Act, (*Cap. 486, Laws of Kenya*), a Certificate of Incorporation given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of the Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered.

41. The Objector is not a member of the company. Their father Peter Mukuha Kago was however a member or shareholder of the company at the time of his death on the 6th May 2010. His 10,000 shares unless first distributed before his death formed part of his estate and will be distributed, in the event of intestacy, equally among all his children surviving him in accordance with the rules of intestacy under the Law of Succession Act, (*Cap. 160, Laws of Kenya*), or in accordance with his written Will upon Probate of Will again in accordance the Law of Succession Act and the Probate and Administration Rules thereunder. According to the Replying Affidavit of the Petitioner and the Objector's own submissions their father died testate, that is left a valid will and bequeathed the 10,000 shares in the manner indicated in paragraph 4 of this Ruling.

42. And Section 28 declares that the subscribers to the Memorandum of Association of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register.

43. Every other person who agrees to become a member of a company and whose name is entered in its register of members, shall be a member of the company. And under Section 120 of the Act, the register of members shall be prima facie evidence of any matters by this Section directed or authorized to be inserted therein. According to the evidence of PW1 the Objector is currently not a member nor has he ever been a member or shareholder of NAIVAS LTD.

44. What then can the Objector's action be likened to? I will liken it to the parable in the Synoptic Gospels of the rich man, who upon embarking on a long journey summoned his three stewards and gave each one of them a sum of money, no doubt according to their respective abilities. I will take the account set out in the Gospel of Apostle Matthew as narrated in the Contemporary English Version Bible (CEV) 1997 Edn. Chapter 25, verses 14-28 at pp. 36 – 37 -

“The Kingdom of God, is also like what happened when a man went away and put his three servants in charge of all he owned. The man knew what each servant could do. So he handed five thousand coins to the first servant, two thousand to the second, and one thousand to the third. Then he left the country.

As soon as the man had gone, the servant with the five thousand coins used them to earn five thousand more. The servant who had two thousand coins did the same with his money and

earned two thousand more. But the servant with one thousand coins dug a hole and hid his master's money in the ground.

Some time later the master of those servants returned. He called them in and asked what they had done with his money. The servant who had been given five thousand coins brought them in with the five thousand that he had earned. He said, "Sir, you gave me five thousand coins, I have earned five thousand more."

"Wonderful!" his master replied. "You are a good and faithful servant. I left you in charge of only a little, but now I will put you in charge of much more. Come and share in my happiness!"

Next, the servant who had been given two thousand coins came in and said, "Sir, you gave me two thousand coins, and I have earned two thousand more."

"Wonderful!" his master replied. "You are a good and faithful servant. I left you in charge of only a little, but now I will put you in charge of much more. Come and share in my happiness!"

The servant who had been given one thousand coins then came in and said, "Sir, I know that you are hard to get along with. You harvest what you don't plant and gather crops where you haven't scattered seed. I was frightened and went out and hid your money in the ground. Here is every single coin!"

The master of the servant told him, "You are lazy and good-for-nothing! You know that I harvest what I don't plant and gather crops where I haven't scattered seed. You could have at least put my money in the bank, so that I could have earned interest on it."

Then the master said, "Now your money will be taken away and given to the servant with ten thousand coins."

45. In my view, and in accordance with the totality of the evidence on record, (*and giving credit to the Objector's evidence which is otherwise not credible*), the family business originally funded by the joint financial efforts or contributions of family members (*excluding the Petitioner according to the Objector*), and operated or managed under the style or name of RONGAI SELF-SERVICE STORES LIMITED, with branches in Rongai, Elburgon and Naivasha ceased to be a family business upon the signature by family members of the Resolution on 31st October 1999. I say so because of the tenor and declared purpose of the meeting -

PURPOSE: *To divide and distribute my wealth among my children.*

46. The Objector was given the business at Rongai along with a house. The Petitioner and his sister was given a house and the business at Elburgon, David Kimani Mukuha and Linet Wairimu were given the business at Naivasha.

47. The Petitioner and David Kimani Mukuha joined hands and run with the business in Naivasha. They have been so successful that they opened branches in Nairobi the capital city of Kenya, and premier business hub in East and Central Africa. They rebranded their business to NAIVAS LIMITED in accordance with the requirements of the law, that is, the Companies Act (*Cap. 486, Laws of Kenya*).

48. The Petitioner and his brother David Kimani Mukuha, and their sisters Linet Wairimu and Grace Wamboi Mukuha, are like the two faithful stewards, in the parable of Matthew (*supra*), who invested well the sums of money given to them by the master and doubled his profits, and were commended by their employer or master upon return from his travels, and made them part or members of his enterprise.

49. On the other hand the Objector is like the third servant who having been entrusted with his sum of

money, dug a hole and kept it there until the return of his master, and told him how fearful he was to invest his money lest it be lost, more particularly knowing that the master reaps where he does not sow or plant, and gather crops where he has not scattered seed.

50. The master rebuked that employee as being a lazy and good-for-nothing servant that he should at least have put/invested the master's money in a bank to earn some interest, and took away the sum given to that employee and gave it to the successful and faithful employees.

51. The Objector was given his inheritance by his father a business store and a house. He knows what he did with it. He may have run it down. Notwithstanding this, he has not, unlike the unfaithful biblical servant, been left out to gnash and grit his teeth. The Petitioner and no doubt with concurrence of other members of NAIVAS LTD have helped set the Objector up with another store, "GREENMART" at Kayole estate in Nairobi.

52. Clearly therefore, the Objector has no interest, legal or equitable in NAIVAS LTD. His interest in the 10,000 shares held by their father in NAIVAS LTD, is co-equal with that of the Petitioner and other children of the late Peter Mukuha Kago, and even then, only upon intestacy. In this case, the Objector does not in any of his Affidavits dispute the validity of his father's will, and the distribution of the 10,000 shares or 20% of their father's interest in NAIVAS LTD. These shares will as already stated be transmitted in accordance with the terms of the Will. He will therefore have no interest at all in NAIVAS LTD.

53. In the upshot therefore the Objector's Applications dated 2nd November 2012 and 9th July 2013 are dismissed with costs to the Petitioner and the estate of the late Peter Mukuha Kago.

54. Finally and in the interests of completeness, the next question to be determined is the question of the Executor(s) of the Will of the late Peter Mukuha Kago, and the distribution of his estate. Counsel will take directions accordingly.

55. It is so ordered.

Dated, signed and delivered at Nakuru this 31st day of October, 2014

M. J. ANYARA EMUKULE

JUDGE