



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 123 OF 1997**

**IN THE MATTER OF THE ESTATE OF MARUTI TARAKWA .....  
DECEASED**

**BEATRICE CHEBENDI HENRY ..... PETITIONER**

**V E R S U S**

**NELSON MUKISI MARUTI ..... OBJECTOR/APPLICANT**

**J U D G M E N T**

The late **MARUTI TORAKWA** died on the 30.12.1990. His daughter **BEATRICE CHEBENDI HENRY** and his son **PROTUS MARUTI** applied for letters of administration intestate and were issued with a grant on the 2.9.1997. The grant was confirmed on the 25.11.1997. **NELSON MIKISI MARUTI** another son of the deceased cross-petitioned to be issued with a grant. He later filed an application dated 22.9.1999 seeking to have the grant nullified. The matter proceeded to full hearing. Nelson Maruti passed on and was substituted by his son **NDIWA NELSON MARUTI**.

Ndiwa Nelson Maruti testified that he is a grandson of the deceased while the petitioner is his auntie. The deceased left plot number **N.KABRAS/LWANDETI/1706**. The plot has not been subdivided. He would like to give his auntie Beatrice 2 acres and the rest shared amongst the family members. It is his evidence that the deceased had about 6 daughters who are all happily married including the petitioner. None of the daughters other than the petitioner is claiming land. The deceased also left 6 sons but they are all deceased except Protus. There are several grandchildren who reside on the land. **PW2 BERNARD KIPLANGAT** is also a grandchild of the deceased. His father was the late **ISAAC BOYO MARUTI**. He is agreeable to the proposed mode of distribution by PW1.

The petitioner Beatrice Chebendi Maruti testified that the deceased was her father. They were 12 children. Six daughters are alive. Five sons are deceased while one son Protus Kwanusi is alive. She did succession with her brother Protus. Some of her brothers sold their shares and moved to Kitale. Her father divided the land and she was given her share. It is only herself and Protus plus the purchasers who live on the land. She would like to get her share of the estate. According to her, five people have bought part of the land.

The court visited the suit land on the 12.3.2014. However, the visit was not very helpful as the land seems to have several hills and valleys. It was not possible to determine the purchasers who bought as well as the acreage of the portions sold. According to petitioner Beatrice the family of Isaac Boyo has sold over 10 acres. Some of the purchasers are **JOHN MANDALALA (2 acres)**, **MUKHWANA (4 acres)**, **MAMA ANNA (4 acres)**. The petitioner also informed the court that one grandson **CHENEKEI** is the one who sold most of the land.

From the evidence on record and pleadings it is clear that the only issue for determination is the distribution of the estate. Before his death Nelson Mikisi Maruti swore an affidavit dated 6.6.2003 giving his proposed mode of distribution. He had proposed to give himself 6 acres and 3 acres each to his brothers. According to him the shares of his deceased brothers by then were to be given to their sons. His affidavit indicated that there were 9 daughters of the deceased. When **NDIWA** testified he indicated that his late father had proposed to give Beatrice 2 acres because she was disturbing him. There is a joint affidavit of Protus Kwanusi, John Ndiwa, Matayo Ndiwa, John Petro Maruti, Ndiwa Nelson Maruti, Ben Kimnekei and Moses Boyo Maruti sworn on the 23.12.2004 also giving a proposed mode of distribution.

The proposal is more or less the same as that of the late Nelson Maruti.

When the grant was confirmed Beatrice Chebendi was allocated 6.94 hectares while Protus Maruti was allocated 1.5 acres. It is clear that Beatrice did not distribute the estate to the other beneficiaries and that is why there has been dispute. Those who purchased have not obtained any title and the land seems to be still in the names of the deceased. According to the official search the suit land is 7.94 hectares. I do find that Beatrice is entitled to inherit the land as it belonged to her late father. I will proceed and distribute the estate as follows:-

1. BEATRICE CHEBENDI ..... 3 ACRES
2. NDIWA NELSON MARUTI..... The remainder to hold in trust and distribute **equally** to the families of the sons of the late Maruti Tarakwa.

The grant issued herein is hereby revoked. A fresh grant shall be issued in the joint names of **BEATRICE CHEBENDI HENRY, NDIWA NELSON MARUTI AND PROTUS KWANUSU MARUTI**. I do further direct that the distribution of the remaining estate shall be based on the sons of the deceased who should share equally and shall not be based on the number of grandchildren. Whoever sold to a purchaser shall thereafter transfer his share to the purchaser. There shall be no orders as to costs.

Delivered, dated and signed at Kakamega this 17<sup>th</sup> day of October 2014

**SAID J. CHITEMBWE**

**J U D G E**