

REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 592 of 2006

IN THE MATTER OF THE ESTATE OF REUBEN KUTOYI LUKHUMWA – DECEASED

AND

SULUMBETE ISAAC REUBEN.....1ST PETITIONER

ELISHA MUKARA KUTOYI.....2ND PETITIONER

R U L I N G

The late REUBEN KUTOYI LUKHUMWA died on the 22nd July 1997. His two sons, Sulumbete Isaac Reuben and Elisha Mukara Kutoyi jointly petitioned this court for letters of administration intestate. According to the petitioners, the estate that is to be distributed to the two of them are two plots namely:_

I. ISUKHA/SHIRERE/706 (1.4 HA.)

II. ISUKHA/MUKHONJE/396 (1.3 HA.)

Unfortunately, the two sons cannot agree on how to distribute the estate. According to the 1st petitioner, Isaac Sulumbete Reuben, his father had two other sons, Charles and John Mushira (deceased) who were given their own plots. The above two plots are to be shared by the petitioners.

The 1st petitioner testified that both of them live on plot ISUKHA/SHIRERE/706. Only the 1st petitioner utilizes plot ISUKHA/MUKHONJE/396 for agriculture. The 1st petitioner's proposed mode of distribution is that the two plots be shared equally. He has built houses on plot 706 and would like to give his brother the 2nd petitioner an equal portion of plot 396. The 1st petitioner has permanent houses on plot 706 which are used for both residential and rental purposes.

On his part, the 2nd petitioner admits that the 1st petitioner has some houses on plot 706. However, according to him, the 1st petitioner is to inherit plot number ISUKHA/MUKHONJE/396 while he takes plot number ISUKHA/SHIRERE/706. He would like the 1st petitioner to move to his plot. The 2nd petitioner utilizes a bigger portion of plot 706. The 2nd petitioner testified that the 1st petitioner's houses on plot 706 were built during the lifetime of their father.

From the evidence adduced by the two petitioners, the only issue for determination is how to distribute the estate. The two plots are almost equal and the evidence on record shows that they are located about 3 km. apart. Since the parties are not agreeable on the mode of distribution and noting that both parties have developed their house on plot ISUKHA/SHIRERE/706, I do distribute the two plots as follows:

I. ISUKHA/SHIRERE/706 – To be shared equally between the two petitioners

II. ISUKHA/MUKHONJE/396 - To be shared equally between the two petitioners

In the end, the deceased's above estate shall be shared equally as stated herein. The grant is hereby confirmed in the above terms. Each party shall meet his own costs.

Delivered, dated and signed at Kakamega this 7th day of February, 2013

SAID J. CHITEMBWE
J U D G E