



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Succession Cause 452 of 1997**

**IN THE MATTER OF THE ESTATE OF DAVID NGUGI NJOROGE ----- DECEASED**

**FLORENCE NDUTA .....PETITIONER/RESPONDENT**

**V E R S U S**

**PRISCILLA JEPKOECH DAVID ..... OBJECTOR/APPLICANT**

**R U L I N G**

On the 30.6.2010 this court delivered its judgment whereby the deceased's estate was distributed to the beneficiaries. The court did not distribute plot number **N.WANGA/NAMAMALI/256** measuring 4 acres. The court also directed PRISCILLA JEPKOECH to file a statement of account on the cane proceeds she had received for the last 12 years. The objector (PRISCILLA JEPKOECH) filed an application dated 1.7.2011 seeking to be given plot number **N.WANGA/NAMAMALI/256** so that she can distribute the same to her children and offset the administrative cause. The objector also sought to have a restriction placed on plot number **BUTSOTSO/ESUMEYIA/1502** by the petitioner removed. She also

prayed that the amount of money due to her children be given to her so that she can distribute it. The petitioner filed a replying affidavit sworn on the 19.7.2012.

The prayer for the removal of the caution against plot number 1502 has been spent as Justice Kimaru on the 20.6.2011 granted that order. In her supporting affidavit to the above application the objector annexed copies of accounts from Mumias Outgrowers Company showing the cane proceeds for plot number **256**. According to her statement of account, she received payments from 1998 up to 2010 although in 2010 the account had a loss of **KShs.29,727/=**. According to her the net amount of money she got was **KShs.76,710/=**. Some of the money was deposited in court. The applicant/objector contends that she has seven children while the petitioner has only one. She would like her family to be considered as comprising eight units while that of the petitioner to have two units.

In her replying affidavit the petitioner contends that the objector has benefited from the cane proceeds from plot number **256** for 12 years. She is asking for an equal share of the proceeds. The petitioner also contends that there were properties in the Rift Valley Province that were given to the applicant alone. The petitioner would like to be given plot number **256**. When the court distributed the estate, part of the mode of distribution was that a sum of **KShs.101,000/=** that had been deposited in court be distributed equally amongst the deceased's eight children. If that distribution has not been made I do order that the portion meant for the seven children of the applicant be released to the applicant who will redistribute to her children.

The main issue now remaining is how plot number **N.WANGA/NAMAMALI/256** should be distributed. The two parties herein are the widows of the deceased. Although the petitioner contends that the Rift Valley properties were given to the objector alone, the proceedings show that there was only one plot number

**35 MAILI NNE/ELDORET** that was given to the applicant. **Section 40** of the Law of Succession Act give guidance as to how the estate of a polygamous deceased should be distributed. The applicant's family comprises seven children and the applicant herself while that of the petitioner is composed of the petitioner and her child. I will proceed to distribute plot number **N.WANGA/NAMAMALI/256** as

follows:-

**1. Priscillah Jepkoech David - 3 acres**

**2. Florence Nduta - 1 acre**

I do further order that since the applicant benefited from the cane proceeds from plot **256** she will meet the costs of the subdivision and transfer of the one acre portion of land meant for the petitioner. The applicant shall hold the three acres for her own benefit and the benefit of her seven children.

In the end, the application dated 1.7.2011 is determined in the above terms and each party shall meet her own costs.

**DELIVERED AND DATED AT KAKAMEGA THIS 29<sup>TH</sup> DAY OF MAY 2013**

**SAID J. CHITEMBWE  
J U D G E**