



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Succession Cause 42 of 2004**

**IN THE MATTER OF THE ESTATE OF ANDREW SHISALA MUHANJI (DECEASED)**

**A N D**

**1. SABINA ALWANGA SHISALA**

**2. RIDAH SHISALA**

**3. ALEXANDER SHISALA.....PETITIONERS**

**JUDGMENT**

The deceased in this cause, ANDREW SHISALA MUHANJI died on 25,7,96. The deceased left behind the following survivors who are listed in the Petition herein.

1. RIDA SHISALA - WIDOW
2. SABINA SHISALA - WIDOW
3. EARNEST SHISALA - SON
4. PATRICK SHISALA - SON
5. PROTUS SHISALA - SON
6. ALEXANDER SHISALA - SON

The assets left behind by the deceased were as following:

1. P.NO. ISUKHA/KAMBIRI/273 - 5 Hectares
2. Pension from Kenya Railways Corporation.

**SABINA SHISALA**, the 1<sup>st</sup> Petitioner in her affidavit in support of the Summons for Confirmation of the grant proposed distribution of the estate as follows:

<b><u>NAME</u></b>	<b><u>PROPERTY</u></b>	<b><u>SHARE</u></b>
a) Sabina Alwanga Shisala	ISUKHA/KAMBIRI/273	5 acres
Ridah Shisala Shisala & Ernest Shisala	“ “ “	2.57 acres – to hold in trust for Alexander
b) Patrick Alambe )		
Protus Shigomere)	ISUKHA/KAMBIRI/273	2.57 acres

**c) Sabina Alwanga Shisala PENSION FROM RAILWAYS**

**Ridah Shisala  
Protus Shigomere**

**CORPORATION  
“ “**

**EQUALLY**

When the 1<sup>st</sup> Petitioner testified in court, she explained that she wanted five acres of the portion of the land where the deceased left her. She also stated that she had no child to assist her hence she needed the entire pension to be given to her.

The son to the deceased, LEXANDER SHISALA who is the third Petitioner filed an affidavit proposing the following mode of distribution:

- a. That the widow of the deceased Rita Shisala gets 0.5 acres**
- b. That the widow of the deceased Sabina A. Shisala gets 1.0 acres**
- c. That all the sons of the deceased to get 2.75 acres each:-**
  - i) Ernest Shisala**
  - ii) Alexander Shisala**
  - iii) Patrick Shisala**
  - iv) Protus Shisala**

When the said son (Alexander) testified in court, he adopted the contents of his affidavit and further stated that the pension should be shared out equally between the six survivors. He also explained that he has proposed that the 1<sup>st</sup> petitioner (Sabina) be given one acre only because she has no children.

From the evidence of the said son, Alexander, it has turned out that the deceased had married four wives but only two survived him. That is RIDAH SHISALA and SABINA SHISALLAH.

- RIDAH SHISALLA the 1<sup>st</sup> wife has two sons, ERNEST and ALEXANDER SHISALA.
- PATRICK and PROTUS SHISALA are the sons of the 3<sup>rd</sup> wife VICTORIA , the 2<sup>nd</sup> wife who passed away.
- The 3<sup>rd</sup> wife, LUCIA passed away and is not survived by any child.
- SABINA (the 1<sup>st</sup> Petitioner) was the fourth wife and has no child.

I have considered the above proposals which do not squarely meet the expectations of Section 40 (1) of the Law of Succession Act which states:-

***“Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.”***

Bearing the said provision in mind, the proposal by Sabina, the 1<sup>st</sup> Petitioner is unreasonable. She would end up with the lion’s share of the estate. The proposal by ALEXANDER, the 3<sup>rd</sup> Petitioner is also not fair as it leaves the 1<sup>st</sup> Petitioner (Sabina) with only one acre of land.

This court's view is that the six survivors who have been listed in this Petition should share the land parcel in question equally, taking into account as far as possible the portion occupied by each beneficiary. 20% of the pension should go to the beneficiary, FLORENCE ALUSA and the balance thereof shared out equally between the beneficiaries who have shared out the land. That is RIDA, SABINA, EARNEST, PATRICK, PROTUS and ALEXANDER.

Consequently, I confirm the grant in the above terms.

*Delivered, dated and signed at Kakamega this 29<sup>th</sup> day of October, 2012.*

**B. THURANIRA JADEN**  
**J U D G E**