



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO.296 OF 2005**

**IN THE MATTER OF THE ESTATE OF MUHONJA MATUKU ::::::::::: (DECEASED)**

**A N D**

**IN THE MATTER OF JACKSON MUHONJERA MATUKU ::::::::::: PETITIONER**

**A N D**

**IN THE MATTER OF ANNA KHAVIRANGA MUHONJIA  
JOSHUA MUHONJIA ::::::::::: APPLICANTS**

**RULING ON DISTRIBUTION**

1. The deceased herein, Muhonjia Matuku died on 25.7.1983 and two succession causes were instituted in respect of his estate viz H.C. Succ. Cause 296 of 2005 (Kakamega) and H.C. Succ. 289 of 2008 (Kakamega). In the former cause, Jason Muhonjera Matuku was the Petitioner and Anna Kaviranga Muhonjia was the Petitioner in the latter cause.
2. Although parties had initially agreed to proceed and hear a protest dated 29.1.2010 by way of oral evidence, on 13.10.2010 a consent was recorded that “*a Ruling on Distribution be made on the basis of the Affidavits on record.*” In that context, it is important to state what the dispute relates to.
3. I note that the deceased left two parcels of land i.e.
  - i) L.R. No. S. Kabra/Bushu/365
  - ii) L.R. No. S. Kabras/Bushu/380
4. In an Affidavit sworn on an unclear date and filed in court in March 2006 Jackson Muhonjera made an unclear proposal as to distribution. I say so because he merely proposed that he should inherit 6 acres; Joshua Chenjeni Muhonjia should inherit 8 acres; Elijah Njuguna Muhonjia should inherit 4 ½ acres; and Laban Muhonjia should inherit 4 acres. It is unclear from what parcel of land the distribution should be made on that basis and the Affidavit is wholly unhelpful to this court.
5. In an Affidavit sworn on 4.11.2008, Joshua Muhonjia also merely stated that certain persons were entitled to the estate but he did not particularize those persons and their alleged entitlement and to which parcel of land that entitlement should be pegged.

6. Annah Khaviranga Muhonjia swore an Affidavit on 4.11.2008 and repeated the same assertions as those made by Joshua Muhonjia in his Affidavit aforesaid.

7. Having so said, Joshua Muhonjia in his Affidavit sworn on 28.9.2009 became more focused and deponed as follows, at paragraphs 2, 7, and 8 stated as follows;

“1. ....

**2. The deceased was survived by the following:-**

<b>Names</b>	<b>Addresses</b>	<b>Ages</b>	
i) Anna Khaviranga Muhonjia		P.O. Box 506 Kakamega	Widow
ii) Sabeth Muhonjia (deceased)		P.O. Box 506 Kakamega	Widow
iii) Selpha Muhonjia Widow (deceased)		P.O. Box 506 Kakamega	
iv) John Muhonjia – Adult		P.O. Box 379 Kakamega	Son
v) Joshua Muhonjia Adult		P.O. Box 506 Kakamega	Son –
vi) Elijaa Njuguna Adult		P.O. Box 506 Kakamega	Son –
vii) Laban Shiundu Adult		P.O. Box 506 Kakamega	Son –
viii) Jackson Muhonjers Matuku		P.O. Box 506 Kakamega	Son – Adult
ix) Frida Tande Daughter in-law		P.O. Box 506 Kakamega	
x) Emily Tande in-law		P.O. Box 506 Kakamega	Daughter
xi) Wakhukha Tande		P.O. Box 506 Kakamega	Grandson
xii) Frida Muhonjia Daughter		P.O. Box 506 Kakamega	Grand
xiii) Patrick Matuku		P.O. Box 506 Kakamega	Grandson
xiv) Diana Muhonjia		P.O. Box 506 Kakamega	Daughter
xv) Rebecca Lichei Muhonjia		P.O. Box 506 Kakamega	Daughter
xvi) Mukasia Muhonjia (unmarried)		P.O. Box 506 Kakamega	Daughter
xvii) Osale Amwayi		P.O. Box 506 Kakamega	Grandchild
xviii) Bakhoya Muhonjia		P.O. Box 506 Kakamega	Daughter
xix) Loice Muhonjia		P.O. Box 506 Kakamega	Daughter
xx) Mmoji Muhonjia		P.O. Box 506 Kakamega	Daughter
xxi) Bilha Muhonjia		P.O. Box 506 Kakamega	Daughter
xxii) Nerima Muhonjia		P.O. Box 506 Kakamega	Daughter
xxiii) Rosemary Muhonjia		P.O. Box 506 Kakamega	Daughter

3. ....

4. ....

5. ....

6. ....

**7. The Estate of the deceased comprises of:-**

(a) Land parcel No. South Kabras/Bushu/380

(b) Land parcel No. South Kabras/Bushu/365

8. That the Identification and shares of all persons beneficially entitled to the said estate have been

ascertained and determined as follows;

1. L.R. NO. SOUTH KABRAS/BUSHU/380 (8.8. HA equivalent to 21.7348 ACRES) – To be taken by the house of ANNA KHAVIRANGA whose children to take are:-

(a) TAND MUHONJIA died and his widow viz:- FRIDA TANDE, EMILY TANDE, jointly i.e. 4.0 HA equality 9.884 ACRES

(b) JOHN MUHONJIA – To be given 2.4 HA equals 5.9340 ACRES

(c) MATUKU MUHONJIA – (Deceased) and his share be taken by PATRICK MATUKU who is his only son – To be given 5 2.2. ACRES

2. L.R. NO. SOUTH KABRAS/BUSHU/365 (9.0 HA which translates into acres as follows  $2.471 \times 9.0 = 22.239$  ACRES) – To be taken by the house of SABETH MUHONJIA (deceased) and SELPHA MUHONJIA (deceased) to be Sub-divided equally among the houses which translated to 1.1 acres for each House. Children to take are as follows:-

(a) SABETH MUHONJIA'S (deceased) children

(i) JACKSON MUHONJERA MATUKU – 3.7 ACRES

(ii) ELIJAH NJUGUNA - 3.7 ACRES

(iii) LABAN SHIUNDU - 3.7 ACRES

(b) SELPHA MUHONJIA'S (deceased) house has only one son – JOSHUA MUHONJIA – 11.1 acres”

8. Jackson Muhonjera in his Affidavit sworn on 29.1.2010 deponed as follows at paragraphs 3, 4, 5, 6, and 7”

“1. ....

2. ....

3. THAT I do not agree with the mode of distribution as proposed by my Co-administrator

4. THAT when our father died he had already distributed the parcels of land to various children and we have all developed our shares and have and have lived there for years and it would be improper for JOSHUA MUHONJERA to re-schedule the distribution mode.

5. THAT the deceased left the following property

- LAND PARCEL NO. KABRAS/BUSHU/380 – 20 ACRES
- LAND PARCEL NO. KABRAS/BUSHU/365 – 22 ½ ACRES

6. THAT I propose that the said property be distributed as follows:-

· LAND PARCEL NO. KABRAS/BUSHU/380

(a) FRIDA TANDE MUHONJIA - 6 ACRES

(b) JOHN MUHONJIA - 6 ACRES

(c) MUHONJIA MATUKU 6 ACRES

(d) JOSHUA CHENJERI - 2 ACRES

· LAND PARCEL NO. KABRAS/BUSHU/365

(e) JACKSON MUHONJERA 6 ACRES

(f) **ELIJAH LABAN NJUGUNA MUHONJIA - 6 ACRES**

(g) **LABAN MUHONJIA - 6 ACRES**

(h) **JOSHUA CHENJERI MUHONJIA - 4 ½ ACRES to add on 2 ACRES above**

7. **THAT our sisters are all married and have already inherited from their husbands' and are comfortable hence should not be forced to inherit our father's estate.**

9. With the above two proposals in mind, I should state that I have read the record and I note that the deceased was a polygamous man and had three wives who are all deceased. They were;

- i) 1<sup>st</sup> wife – Annah Muhonjia
- ii) 2<sup>nd</sup> wife – Sabeti Muhonjia
- iii) 3<sup>rd</sup> wife – Selipha Muhonjia

His sons were/are

- i) John Muhonjia
- ii) Jeremiah Matuku (deceased)
- iii) Philip Muhonjia
- iv) Elijah Muhonjia
- v) Shiundu Muhonjia
- vi) Joshua Muhonjia
- vii) Tande Muhonjia (deceased)

The daughters and their marital status were/are;

- viii) Dinah Muhonjia - married
- ix) Lichey Muhonjia - married
- x) Mukasia Muhonjia - unmarried
- xi) Bakhoya Muhonjia - married
- xii) Loice Muhonjia - married
- xiii) Mumofi Muhonjia - married
- xiv) Beliah Muhonjia - married
- xv) Nechesa Muhonjia - married
- xvi) Rosemary Muhonjia - married

10. Further, I have seen a letter by the Ag. Chief, Kabras South Location dated 9.6.2008. In that letter he made reference to a case before the Kabras Land Dispute's Tribunal and whose decision was adopted by the Chief Magistrate's Court in Kakamega on 20.1.2006. He stated that the decision was that land parcel no. 365 would be given to the 2<sup>nd</sup> and 3<sup>rd</sup> houses and the 1<sup>st</sup> house would be given 11.25 acres but it is unclear from which of the two parcels of land the said land would be excised from. I note that land parcel no.365 is 9 hectares while land parcel no. 380 is 8.8. hectares.

11. With the above background, what is the best module of distribution? **Section 40** of the Law of Succession Act provides as follows;

**“S.40 (1) 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.**

***(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”.....”***

12. Further in Rono vs Rono [2004] e KLR it was held that in distributing land pursuant to section 40 of the Act, the court ought to be reasonable and ensure that the module of distribution is practical (per Omolo J.A.). I agree and in the instant case, I have the following pointers to the most reasonable and practical module;

- a) the number of houses
- b) the number of children of the deceased
- c) the present occupation by each house
- d) the number of unmarried daughters, grandchildren and other dependants of the deceased.

13. My opinion is now as follows;

Firstly, I do not have the proceedings of the Kabras Land Dispute’s Tribunal and I would have wished to have a look at it before finally distributing the estate. I say so, because perhaps the Tribunal actually determined the issue and there may not have been an appeal against the said determination. It would be wrong for this court to proceed as if that was a non-issue.

Secondly, and before I make a final order as to distribution, I would like the parties to clarify by way of Affidavits where the children of Jeremiah Matuku (deceased) and Tande Muhonjia (deceased) are presently living.

Once the above information is properly placed before court, then I will quickly make final orders as to distribution, with the above background in mind.

Let parties comply with the above directions within 30 days of this order.

14. Orders accordingly.

***Delivered, dated and signed at Kakamega this 22<sup>nd</sup> day of February, 2011***

**ISAAC LENAOLA  
J U D G E**