



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE O. 396 OF 2009

**IN THE MATTER OF THE ESTATE OF JAFETHA MUHANDIA
KUNDUKVIDECEASED**

A N D

HELLEN INAMANI

MWAKHA.....PETITIONER

V E R S U S

**ANDREA ASHIRIBWA MUHATIA
LEONIDA ATAMBA**

ANYULA.....OBJECTORS

R U L I N G

1. The deceased herein, Japhetha Muhatia Kundukuvi died intestate on 19.5.2005 and left behind the following persons;

i) "LEONIDA ATAMBA ANYULA

ii) HELLEN INAMANI MUHATIA

iii) PERES KHALIOHI MUHATIA

iv) GLADYS CHIMWANI MUHATIA

v) MAURICE SHIVANDA MUHATIA

vi) **MARGARET IMBITI MUHATIA**

vii) **MARY MASITSA MUHATIA**

viii) **ANDRE ASIBWA MUHATIA**

ix) **LEAH IMBITI MUHATIA”**

2. He also left behind land parcel no. Isukha/Murhanda/1029 measuring 1.9 hectares in size.

3. A grant of letters of administration was issued to Hellen Inamani Mwakha on 9.12.2009 and in an application to confirm the grant dated 19.7.2010, she proposed to distribute the land as follows;

“ISUKHA/MURHANDA/1029

ANDREA SHILIBOHA MUHATIA	-	1.0 ACRES
LEONIDA ATAMBA ANYULA	-	1.0 ACRES
LEA IMBITI	-	$\frac{3}{4}$ ACRE
HELLEN INAMANI		
PERUS KHALUYI		
GLADYS CHIMWANI	-	1 $\frac{3}{4}$ ACRES
MARY MASITSA		JOINTLY
MARGARET IMBITI MUHATIA”		

4. In an Affidavit of protest sworn on 6.12.2010, Andrew Asibwa Muhatia deponed that;

i) title no. Isukha/Murhanda/639 belonging to the deceased had been left out of the distribution schedule

ii) the deceased had more than one house and had prior to his death distributed the estate as follows;

1ST HOUSE – ISUKHA/MURHANDA/639

i) **LEONIDA ATAMBA ANYULA**

ii) **HELLEN INAMANI MUHATIA**

iii) **PERES KHALIOHI MUHATIA**

iv) **GLADYS CHIMWANI MUHATIA**

v) **MAURICE SHIVANDA MUHATIA**

vi) **MARGARET IMBITI MUHATIA**

vii) **MARY MASITSA MUHATIA**

2ND HOUSE – ISUKHA/MURHANDA/1039

i) **ANDREW ASIBWA MUHATIA**

ii) **LEAH IMBITI MUHATIA”**

5. Having considered all matters before me, it is not fair, as was ordered earlier, to distribute the estate without title no. 639 being authenticated as belonging to the deceased. I say so because no party, including the Protester, has brought evidence of that fact. Further, it is unclear whether Maurice Shivanda has any interest in the estate as Hellen Inamani left him out and Andrew Asibwa wants him included.

6. In the event, I will order that oral evidence be taken to address the above issues before any order as to distribution can be made.

7. Orders accordingly.

Delivered, dated and signed at Kakamega this 14th .day of April, 2010

ISAAC LENAOLA

J U D G E