



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
SUCCESSION CAUSE NO. 786 OF 2009

**IN THE MATTER OF THE ESTATE OF THE LATE *LAURENT MAKHELO ALUTSESHE* –
DECEASED**

A N D

**INDECHE VICTORIA MAKHELO &
ANDREA MATAKWA MAKHERO.....PETITIONERS**

RULING

1. In the Petition for a grant of letters of administration filed on 14.12.2009, Indech Victoria Makhelo and Andrea Matakwa Makhero indicated that the following persons survived the deceased, Laurent Makhelo Alutseshe who died on 7.3.2006;

- i) INDECHE VICTOR MAKHERO
- ii) ANDREW MATAKWA MAKHERO
- iii) JOSEPHAT ODIEBA MAKHERO
- iv) JOHN SHIYONZO MAKHERO
- v) MICHAEL ALUTSESHE MAKHERO
- vi) ERNEST OCHWEYA MAKHERO

vii) MAURICE OMWANDA MAKHERO

2. In the same Petition, it is indicated that the only asset that was available for distribution was land parcel No. **Butsotso/Indangalasia/47**.

3. A grant of letters of administration was made to the Petitioners on 16.3.2010 and in an application dated 23.3.2010, they proposed that the said land be shared out as follows;

- i) INDECHE VICTOR MAKHERO - 1.0 acre
- ii) ANDREW MATAKWA MAKHERO - 6.0 acres
- iii) JOSEPHAT ODIEBA MAKHERO - 5.5 acres
- iv) JOHN SHIYONZO MAKHERO - 6.0 acres
- v) MICHAEL ALUTSESHE MAKHERO - 6.0 acres
- vi) ERNEST OCHWEYA MAKHERO - 5.5 acres
- vii) MAURICE OMWANDA MAKHERO - 6.0 acres

4. On 29.9.2010, Josephat Odieba Makhero, complained that the above distribution was unfair and that the land should be shared equally. I gave parties time to discuss the matter and finally on 8.12.2010, they agreed that a Ruling on distribution can be made.

5. What is the law on the subject? It is clear to me that the deceased was monogamous and there is no evidence that he had more than one house. That being the case, **S. 38** of the Law of Succession Act, Cap 160 Laws of Kenya provides as follows;

“S. 38 – Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”

6. Looking at the above section against the proposal by the Administrators two issues are clear;

- i) the deceased’s widow has only given herself one acre out of the whole parcel of land.

ii) the 35 acres of land remaining has been shared out to the sons of the deceased in shares of 5.5 acres or 6.0 acres respectively. No reason for doing so has been given.

7. It is clear that once the widow agrees to dispossess herself of the only asset which she was entitled to for life, it means that the beneficiaries ought to share the land equally as proposed by Josphat Odieba. I say so because the Law of Succession Act treats each child of the deceased as equal and barring any disposition or bequest to any of them while the deceased was alive, each should inherit an equal portion of the land as the other.

8. In the event, the land should be inherited as follows;

- i) INDECHE VICTORIA MAKHERO - 1.0 acre
- ii) ANDREW MATAKWA MAKHERO - 5.8 acres
- iii) JOSEPHAT ODIEBA MAKHERO - 5.8 acres
- iv) JOHN SHIYONZO MAKHERO - 5.8 acres
- v) MICHAEL ALUTSESHE MAKHERO - 5.8 acres
- vi) ERNEST OCHWEYA MAKHERO - 5.8 acres
- vii) MAURICE OMWANDA MAKHERO - 5.8 acres

9. The grant should be confirmed in the above terms.

10. Costs in the cause.

11. Orders accordingly.

Delivered, Dated and Signed at Kakamega this 14th day of April, 2011.

ISAAC LENAOLA

JUDGE