



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 860 OF 2007**

**IN THE MATTER OF THE ESTATE OF NABONGO SHITAWA MUMIA .....  
DECEASED**

**A N D**

**JAMES NETIA SHITAWA .....  
PETITIONER**

**V E R S U S**

**NABONGO PETER MUMIA SHITAWA .....  
OBJECTOR**

**R U L I N G ON DISTRIBUTION**

1. The deceased herein, Nabongo Shitawa Mumia died on 9.4.1974 and from the Petition filed on 22.10.2007, by James Netia Shitawa, he left behind the following persons surviving him;

- i. *Sorphine Nasiche Shitawa* - *wife (now deceased)*
- ii. *Nabongo Peter Mumia Shitawa* - *son*
- iii. *James Netia Shitawa* - *son*
- iv. *Gabriel Lukondo Shitawa* - *son(now deceased)*
- v. *Rita Awori Shitawa* - *daughter (now deceased)*
- vi. *Maurice Alele Shitawa* - *son*
- vii. *Marceline Shitawa* - *daughter*

- viii. *Michael Adala Shitawa* - *son*
- ix. *Phaustine Shitawa* - *daughter*
- x. *Hellen Shitawa* - *daughter”*

2. He also left behind the following properties/assets;

- a) *“Land parcel no. S/Wanga/Lureko/537*
- b) *Land parcel no. S/Wanga/Lureko/600*
- c) *Land parcel no. N/Wanga/Matungu/64*
- d) *Land parcel no. S/Wanga/Lureko/540”*

3. Ochieng J. made a grant of letters of administration to the Petitioner on 24.4.2008. On 2.10.2009, Nabongo Peter Shitawa Mumia filed a summons to revoke the grant and on 23.6.2010, parties recorded a consent to revoke that grant and a fresh one was issued to James Netia Shitawa and Nabongo Peter Mumia Shitawa jointly.

4. The only issue left to be determined at this stage is the distribution of the deceased's estate and both Administrators filed separate Affidavits on distribution. The first was by Nabongo Peter Mumia Shitawa sworn on 20.8.2010 and he indicated that;

i) “the deceased was survived, at the time of death, by the following persons;

- (a) *Sorophine Nasiche Shitawa* - *wife (now deceased)*
- (b) *Nabongo Peter Mumia Shitawa* - *son*
- (c) *James Netia Shitawa* - *son*
- (d) *Gabriel Lukondo Shitawa* - *son(now deceased)*
- (e) *Rita Awori Shitawa* - *daughter (now deceased)*
- (f) *Maurice Alele Shitawa* - *son*

(g) *Marceline Shitawa* - *daughter*

(h) *Michael Adala Shitawa* - *son*

(i) *Phaustine Shitawa* - *daughter*

(j) *Hellen Shitawa* - *daughter”*

(ii) His proposal for distribution and justification thereof is as follows;

**a. With regard to L.R. No. North Wanga/Matungu/64**

*This parcel of land hosts the Nabongo Cultural Centre which was sponsored, on the request of Nabongo Council of Elders, by Mumias Sugar Company at a cost of KShs.14 Million as can be seen from the document annexed herein and marked as ‘NPMS 1’. On this parcel of land, also lies the ‘shiembekho’ which means the burial grounds of the Wanga kings, where Nabongo Peter Mumia Shitawa will be burried and therefore due to the historical importance of this parcel of land, it is proposed that the same be distributed to Nabongo Council of Elders and registered in the name of the Nabongo Cultural Centre as a shrine.*

**(b) With regard to L.R. South Wanga/Lureko/537**

*This parcel of land is to be shared equally among all the surviving 7 children of the deceased and the 2 widows of the late Gabriel Lukondo Shitawa (namely Angeline and Anne), which widows shall form a single unit for the purpose of distribution.*

**(c) With regard to L.R. South Wanga/Lureko/540**

*Historically, this parcel of land was the palace of the Wanga king. However, with the passage of time, this piece of land has been utilized for agricultural purposes thus diminishing its historical and cultural value. Therefore, this parcel of land is to be shared equally among the 7 surviving children of the deceased and the 2 widows of the late Gabriel Lukondo Shitawa (namely Angeline and Anne), which widows shall form a single unit for the purpose of distribution.*

**(d) With regard to L.R. South Wanga/Lureko/600**

*This piece of land was the home of the legendary Wanga king, Nabongo Mumia. This parcel of land measures 2.3 acres and it is proposed that 1 acre of this piece of land be preserved as an historical site in the name of Nabongo Cultural Centre, while the balance of 1.3 acres be shared equally among brothers, Vitalis Juma Amanyanya and Raphael Anabaswa Amanyanya, whose father was settled therein almost 4 decades back by the deceased.”*

5. On his part, James Netia in an Affidavit sworn on 22.10.2010 proposed as follows;

i) that the persons entitled to the estate are;

a) *Nabongo Peter Mumia*

b) *James Netia Shitiwa*

c) *Mourice Alele Shitiwa*

d) *Michael Adala Shitiwa*

e) *Vitalis Juma Amany*

f) *Raphael Anabaswa Amany*

g) *Anjeline Aswani Lukondo*

ii) *that the distribution be done as follows;*

**Land parcel No. South Wanga/Lureko/537**

a) *Nabongo Peter Mumia Shitawa*

b) *James Netia Shitawa*

c) *Mourice Alele Shitawa*

d) *Michael Adala Shitawa*

e) *Anjeline Aswani Lukondo & sons*

**Land parcel No. South Wanga/Lureko/600**

a) *Vitalis Juma Amany*

- b) *Raphael Anabaswa Amany*
- c) *Nabongo Cultural Centre*

**Land parcel No. North Wanga/Matungu/64**

- a) *Nabongo Cultural Centre*

**Land parcel No. South Wanga/Lureko/540**

- a) *Nabongo Peter Mumia Shitawa*
  
- b) *James Netia Shitawa*
- c) *Mourice Alele Shitawa*
  
- d) *Michael Adala Shitawa*
- e) *Anjeline Aswani Lukondo & sons*

6. Which of the two proposals meets the expectations of the law? It is not said that the deceased was a polygamous man. It also seems to be the common position that Vitalis Juma Amany and Raphael Anabaswa Amany, nephew of the deceased were entitled to the estate.

7. **Section 38** of the Law of Succession Act 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 section 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.”***

8. In the present case, Marceline Shitawa, Hellen Shitawa and Faustine Shitawa, daughters of the deceased have filed affidavits that they are not interested in the estate. That leaves the deceased’s sons and wives of deceased sons together with Raphael and Vitalis aforesaid as the persons to whom the estate should go to.

9. It is agreed that land parcel no. **South Wanga/Lureko/600** is presently occupied by Vitalis and Raphael and both parties agree that the Nabongo Cultural Centre is also proposed to be built on one acre of that land and so since there is no dispute on the matter, it shall be distributed as proposed by both Administrators.

**10.** Regarding land parcel no. **North Wanga/Matungu/64** both parties agree that it should be registered in the names of the Nabongo Cultural Centre as a traditional shrine, and so it is ordered;

**11.** Title no. **South Wanga/Lureko/537** has a dispute but my view is that reading **Section 38** aforesaid against the two opposing proposals, each survivor is equally entitled to it and therefore the proposal by Nabongo Peter Mumia Shitawa is both reasonable and within the law. I will adopt his module of distribution in that regard save that the deceased's daughters will not be considered. The same argument goes for title no. South Wanga/Lureko/540 and I similarly adopt the module by Nabongo Mumia Shitawa.

**12.** From what I have said above, it follows that the estate herein shall be distributed as follows;

**1. North Wanga/Matungu/64**

***(a) Nabongo Cultural Centre – to be registered in the names of the Nabongo Council of Elders as Trustees in perpetuity.***

**2. South Wanga/Lureko/537**

***(a) Nabongo Peter Mumia Shitawa***

***(b) James Netia Shitawa***

***(c) Maurice Alele Shitawa***

***(d) Angeline Lukondo Shitawa and Anne Lukondo Shitawa (as one unit)***

***(e) Michael Adala Shitawa***

***To share equally***

**3. South Wanga/Lureko/540**

***(a) Nabongo Peter Mumia Shitawa***

***(b) James Netia Shitawa***

***(c) Maurice Alele Shitawa***

***(d) Angeline Lukondo Shitawa and Anne Lukondo Shitawa (as one unit)***

*(e) Michael Adala Shitawa*

*To share equally*

**4. South Wanga/Lureko/600**

*(a) Nabongo Cultural Centre - 1 acre*

*(b) Vitalis Juma Amanyanya &*

*(c) Raphael Anabaswa Amanyanya - 1.3 acre ( to share equally)*

13. The grant is confirmed in these terms and each party shall bear its own costs.

14. Orders accordingly.

*Delivered, dated and signed at Kakamega this 14<sup>th</sup> day of April, 2011*

**ISAAC LENAOLA**

**J U D G E**