



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
SUCCESSION CAUSE NO. 95 OF 2005

MUSA MUHEMBI LUSENO DECEASED

A N D

JACKSON LUSENO MUHEMBI..... PETITIONER

RULING ON DISTRIBUTION

1. Musa Muhembi Luseno died on 5.6.1993 and in the petition filed on 7.3.2005, Jackson Luseno Muhembi stated that the following persons survived him;
 - a) *Jackson Luseno Muhembi*
 - b) *Wilson Munyasa Muhembi*
 - c) *Duncan Kuyanda Musiomi*
 - d) *Joshua Mmanyi Muhembi*
 - e) *Hudson Shitaka Juma*

2. He also indicated that L.R. No. Isukha/Shiakungu/2002 was the only asset that was left by the deceased.

3. A grant of letters of administration was made on 27.5.2005 and in it, he proposed as follows; L.P. NO. ISUKHA/SHIAKUNGU/1009 to be inherited by;
 - a) *Jackson Luseno Muhembi*
 - b) *Wilson Munyasa Muhembi*
 - c) *Duncan Kayanda Musiomi to share equally*
 - d) *Joshua Mmanyi Muhembi*
 - e) *Hudson Shitaka Juma*

4. Before the grant could be confirmed, Joshua Momanyi Muhembi filed an Affidavit of protest and stated that the following persons were the ones entitled to the estate;
 - a) *James Musoka*
 - b) *Jackson Luseno*
 - c) *Nathan Anyika*
 - d) *Daniel Jumba*

- e) *Khayiya Opiedo*
- f) *Charles Musyomi*
- g) *Siayi Lichoti*
- h) *Muyasa Muhembi*
- i) *Joshua Mmboyi*

5. Further that prior to his death, the deceased had given land to the following persons;

- a) *Jackson Luseno*
- b) *James Musoka (Deceased)*
- c) *Andrea Nahonzo Muhembi*
- d) *Daniel Jumba (Deceased)*
- e) *Nathan Anyika Muhembi*
- f) *Khayiya Opiendo*

6. The above being the case, it was his proposal that the following persons be given the land;

- a) *Siayi Lichoti – deceased*
- b) *Munyasa Muhembi*
- c) *Charles Musiomi (deceased)*
- d) *Joshua Momanyi Muhembi*

7. Zibeta Itambo Magotsi, a daughter of the petitioner filed an affidavit on 3.12.2007 and she took the position that the petitioner's proposal was the correct one.

8. One Sarah Muhatia, Tabitha Mukhunyu Shitahayi and Jeredah Shitakhwa also filed Affidavits on 24.1.2011 and agreed with his proposal on distribution.

9. In oral evidence, Joshua added that land parcel number Kakamega/Shiakungu/1002 was sub-divided into four land parcels for the four named persons above i.e. land parcel no. 996 to Jackson Luseno; no.999 to James Musoka; no.997 to Andrew Muyonzo; no.1003 to Nathan Anyika and no. 1008 to Saiya Muhembi.

10. Jackson Luseno, in answer stated that he was given another parcel of land measuring 1.25 acres by the deceased in 1970 (later registered as title numbers.996 and 1647).

11. From the above evidence, what is the best mode of distribution? S.38 of the land 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 sections 41 and 42, envelop upon the surviving child, if there be only one. Or be equally divided among the serving children.

12. It is also the law, as I know it, that where the deceased has made a bequest to any beneficiary prior to his death, it may be taken into account when distribution is made. In the instant case, although here is evidence that the petitioner obtained land in 1970, there is no evidence that the said parcel of land was a bequest by the deceased. Further, it is not true from what I have seen on record, and as claimed by the protester, that title no. 1002 was part of a larger parcel of land which the deceased then sub-divided.

13. The certificate of official search indicates that the land was initially registered in the deceased's name

on 17.6.1976.and having so said and in line with **S.38** of the Act, and noting also that the deceased's daughters are in agreement with the proposal by the petitioner, it follows that all the sons of the deceased, namely;

- i. *Wilson Munyasa Muhembi*
- ii. *Duncan Kuyanda Musiomi*
- iii. *Joshua Momanyi Muhembi*
- iv. *Hudson Shitaka Juma*
- v. *Jackson Luseno Muhambi,*

Should share land parcel no. Kakamega/Shiakungu/1002 equally and the grant is confirmed in those terms.

14. Costs in the cause.

Delivered, dated and signed at Kakamega this 14th day of April, 2011

**ISAAC LENAOLA
J U D G E**