



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**SUCCESSION CAUSE NO.210 OF 2005**

**IN THE MATTER OF THE ESTATE OF TIRIYA MUHONJA .....**  
**DECEASED**

**AND**

**ROSA DAUDI MUNYASA .....**  
**PETITIONER**

**V E R S U S**

**SARAH ISOGONI .....** 1ST  
**OBJECTOR**

**ELIJAH SHAVANGA .....** 2ND  
**OBJECTOR**

**RULING ON DISTRIBUTION**

1. In the Petition for a grant of letters of administration filed on 19.4.2005, Rose Daudi Munyasa indicated that the deceased, Tariya Muhonjia w/o Munyasa Shavanga died on 6.10.1999 and left behind land parcels number **Kakamega/Serem/591** and **732** measuring 0.6 hectares and 0.45 hectares respectively. The land parcels were registered jointly with her co-wife, Sarah Isogoni Shavanga, and each was to have half-share thereof.
2. It is agreed that Tariya had only one child namely, Rose Daudi Munyasa and that the land originally belonged to Munyasa Shavanga.
3. A grant of letters of administration was made to Rose on 7.6.2005 and in her Application dated 21.12.2005, she sought to confirm the grant and have her mother's share transmitted to her.
4. On 14.10.2009 parties appeared before Chitembwe J. and he ordered one Elijah Shavanga to file an Affidavit of Protest to the proposal of Rose but he never did so.

5. In any event, the law on the subject is clear. **Section 101(1) (a) and (b)** of the Registered Land Act, Cap 300 provides as follows;

**“S. 101 (1) - An instrument made in favour of two or more persons, and the registration giving effect to it, shall show -**

**(a) whether those persons are joint proprietors or proprietors in common; and**

**(b) where they are proprietors in common, the share of each proprietor,”**

6. Further **section 103 (1) and (2)** of that Act provides as follows;

**“S.103 (1) Where any land, lease or charge is owned in common, each proprietor shall be entitled to an undivided share in the whole, and on the**

**death of a proprietor his share shall be administered as part of this estate.**

**(2) No proprietor in common shall deal with his undivided share in favour of any person other than another proprietor in common of the same land, except with the consent in writing of the remaining proprietor or proprietors of the land, but such consent shall not be unreasonably withheld.”**

7. Those sections must then be read with **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. It is agreed that Rose was the only child of Tariya Muhonja and it is apparent from a letter dated 7.11.2002 by the District Officer, Tiriki East Division that the only reason why Elijah Shavanga is unhappy with Rose inheriting her mother’s share in the land is that *“the land belonged to [his] father and daughters cannot inherit any estate.”*

9. The above position, if it is true is not only against the statute as I have shown above but also Article 27 of the Constitution which outlaws discrimination on the basis of gender.

10. In the event, i find that the share of Tariya Muhonja comprised in land parcels numbers **Kakamega/Serem/592 and 731** shall be inherited by Rose Daudi Munyasa and she shall be registered jointly with Sarah Isogoni Shavanga. The grant is confirmed in those terms.

11. Orders accordingly.

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

**ISAAC LENAOLA**

**JUDGE**