



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO.3841 OF 2004**

**IN THE MATTER OF THE ESTATE OF MAKOKHA OGOLA (DECEASED)**

**THOMAS MALAFU MAKOKHA  
EDWARD WANDERA MAKOKHA.....PETITIONERS**

**VERSUS**

**JOHN BARAZA MAKOKHA.....RESPONDENT**

**R U L I N G**

On 30<sup>th</sup> June 2010, this court issued a certificate of partial confirmation of grant to the estate of Makokha Ogola (the deceased). All the properties that comprised the estate of the deceased, save one, were distributed to the dependants of the deceased. However, the dependants of the deceased could not agree on how to one property registered as Nakuru Municipality Block 13/57 (the suit property) was to be distributed. This property is a residential property situate within the municipality of Nakuru. One dependant, John Baraza Makokha was particularly aggrieved with the proposal that had been made by the petitioners and other dependants in regard to how the said property was to be distributed. In the application for confirmation of grant, the petitioners had proposed that the said property be inherited by their mother, Cornelia Anyango Makokha. It later emerged that the petitioners intended to sell the suit property and thereafter apply the proceeds therefrom to pay the debts in respect of the suit property and thereafter distribute the balance equally among all the beneficiaries of the deceased. This proposal appeared not to be acceptable to the respondent. This court directed that the issue in regard to who is entitled to inherit the suit property is to be determined after the court hears oral evidence from the protagonists.

At the hearing of the case, this court heard evidence adduced by John Baraza Makokha and by Calisto Makokha. From the said testimony, it was apparent that there was in actual fact no dispute between the petitioners and the respondent in regard to how the suit property was to be dealt with in order to achieve equitable distribution of the same. Both agreed that the suit property ought to be sold and the proceeds therefore distributed equally among all the dependants of the deceased after the settlement of debts due in respect of the suit property which amounted to approximately Kshs.50,000/-. It was apparent that the respondent's initial objection to the proposed sale of the suit property was informed by his lack of trust that the petitioners would actually give him his share of the inheritance that will be established to be legitimately be due to him. The other concern was the respondent's fear that the suit property would be sold at a price that did not reflect the market value of the said property.

Having considered the facts of this case, it was clear to the court that both parties have agreed on the way forward in regard to the distribution of the suit property. This court therefore directs that the suit property shall be valued by a reputable firm of valuers based at Nakuru. The cost of valuation shall be borne by all the dependants. Thereafter, the suit property shall be sold to any interested party at a price that is close to or nearest to the assessed valuation. Upon a buyer being secured, the sale agreement shall be executed by the petitioners and the respondent. The entire proceeds of the sale shall be deposited in court if the parties herein shall be unable to agree on distribution. Otherwise, this court directs that the proceeds of the said sale shall, in the first instance, be used to defray the debt in respect of the suit property of approximately Kshs.50,000/-. The balance of the purchase consideration shall be distributed equally among all the dependants of the deceased. There shall be no orders as to costs. Any aggrieved party shall be at liberty to

apply.

**DATED AT NAIROBI THIS 5<sup>TH</sup> DAY OF APRIL, 2011**

**L. KIMARU**  
**JUDGE**