



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**

**Probate & Administration 477 of 2006**

**IN THE MATTER OF THE ESTATE OF MAILU NTHUMBI (DECEASED)**

DANIEL MWALIMU MAILU ..... 1<sup>ST</sup> PETITIONER/ APPLICANT

MONICAH MATHEI MAILU ..... 2<sup>ND</sup> PETITIONER/APPLICANT

VERSUS

SIMON MUSILI MAILU ..... 1<sup>ST</sup> RESPONDENT/OBJECTOR

RAEL KAVESU MAILU ..... 2<sup>ND</sup> RESPONDENT/OBJECTOR

**RULING**

1. I am merely asked to determine at this stage, what properties are available for distribution as regards the estate of Mailu Nthumbi (deceased). I note as follows:-

- i. the properties that the deceased left undistributed are;
  - a. Wamunyu/Kyamatula/46
  - b. Wamunyu/Kyamatula/100
  - c. Wamunyu/Kyamatula/118
  - d. Wamunyu/Kyamatula/103
  - e. part of Wamunyu/Kyamatula/104
  - f. Yathui/Kyanguluni/690
  - g. plot No. 40 measuring 50 x 100 ft at Yathui Market.

ii. That there was a dispute regarding titles Nos. Wamunyu/Kyamatula/100, 103 and 104 in Machakos Land Disputes Tribunal Case No.83/2006 and the Tribunal determined on 16/5/2007 that the two plots be shared equally between the deceased's two wives viz Kavesu and Mathei Mailu. In Machakos Court **CM's Court Case No. 89/2007** filed pursuant to the Tribunal's decision, the decree refers to parcels Nos. 46 and 118 aforesaid as the land parcels to be shared equally between the deceased's wives. In **Machakos CM'S Court Case No. 87/2007**, parcels Nos.100 and 104 aforesaid were also ordered to be divided equally between the deceased's wives.

2. The question before me is whether, those decisions are binding on this court or not?

3. I should begin by stating that title No. Wamunyu/Kyanguluni/690 and Plot No.40 Yathui Market are

readily available for distribution by this court as there is no consensus on that fact. Further, it is my simple view that the proceedings before the Machakos Land Disputes Tribunal were undertaken under Section 8 of the Land Disputes Tribunals Act. This court's powers under Section 9 of that Act are limited to hearing appeals on issues of law from decisions rendered by a Provincial Appeals Committee. Of course, again this court has powers under Order LIII of the Civil Procedure Rules to interrogate the proceedings of the Tribunal if it is properly moved to do so.

4. Whatever my views about the legality or otherwise of the Tribunal's proceedings, can this court *suo motu* determine that they should not be upheld? I refuse to accept that proposition. Our legal system is one where decisions of quasi-judicial Tribunals must be properly placed before the High Court and by known legal channels for scrutiny. The Petitioners did not move to stop the proceedings and have not moved to challenge its decision. In the event, the decision that the properties listed above save plots Nos.40 and 690 be shared equally between the deceased's two houses must be upheld. That way the sanctity of decisions lawfully handed down can be protected and upheld.

5. In the event, this court can and should only venture to order distribution of the following properties;

- a. plot No. 40 Yathui Market
  - b. title No. Yathui/Kyanguluni/690.
6. Orders accordingly.

Dated and delivered at Machakos this **26<sup>th</sup>** day of **August 2009**.

**ISAAC LENAOLA**

**JUDGE**

In presence of:       Mrs Nzei for Petitioner

                                  Mr Sila for Objector

**ISAAC LENAOLA**

JUDGE