



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
OF KISII

Succession Cause 127 of 2001

IN THE MATTER OF THE ESTATE OF:

**WILLIAM OSORO ONGONDO ..... DECEASED**

**AND**

**PHILIP OBONYO OSORO ..... PETITIONER**

**VERSUS**

**HELLEN ATIENO OSORO**

**ELISHA NYAKANGO OSORO**

**JULIUS ONYANGO OSORO**

**ARTHUR OGAL OSORO**

**PAUL MBOYA OSORO**

**PETER OWINO OSORO..... OBJECTORS**

**JUDGMENT**

The Petitioner and the first objector are the administrators of the estate of the late **William Osoro Ongodo**, hereinafter referred to as “**the deceased.**” The deceased died on 13<sup>th</sup> July 1996. At the time of his death he was married to two wives, Yunes Akumu Osoro, the first wife who had predeceased him and Hellen Atieno Osoro, the second wife. The house of Yunes Akumu Osoro has 10 beneficiaries namely:

1. Philip Abonyo Osoro (son)
2. Ernest Oloo Osoro (son)
3. Penina Oluoch (daughter)
4. Rael Ngere (daughter)

5. Loice Owiti (daughter)
6. Susan Lucy (daughter)
7. Silper Atieno (daughter)
8. Dorcas Ajwang (daughter)
9. Caren Obunga (daughter)
10. Salome Aoko (daughter)

The second house has also 10 beneficiaries namely:

1. Hellen Atieno Osoro (widow)
2. Elisha Nyakango Osoro (son)
3. Julius Onyango Osoro (son)
4. Arthur Ogal Osoro (son)
5. Paul Mboya Osoro (son)
6. Peter Owino Osoro (son)
7. Dorsila Rosemary Agik (daughter)
8. Pamela Auma Osoro (daughter)
9. Julia Auma Osoro (daughter)
10. Debora Adwet (daughter)

The deceased's estate comprised of three properties namely **West Kasipul/Konyango Kokal/6**, **West Kasipul/Konyango Kokal/150** and **West Kasipul/Konyango Kokal/157**.

The beneficiaries of the deceased's estate were unable to agree on the mode of distribution of the aforesaid estate. They urged this court to distribute the same. The first objector wanted the property known as **West Kasipul/Konyango Kokal/6** divided according to the number of sons left behind by the deceased, adding herself as an additional until. She also testified that the deceased had settled the petitioner on a portion of the said land and she did not wish to have that position altered. As regards **West Kasipul/Konyango Kokal/150**, she testified that it had all along been cultivated by the first house and her view was that it should be given to the beneficiaries in the first house. As regards **West Kasipul/Konyango Kokal/157**, the objector said that the plot had always been cultivated by the second house and so the same should be given to her and her children to share equally.

There is a Celtel B.T.S. (Base Receiver) located partially on West Kasipul/Konyango Kokal/6 (<sup>3</sup>/<sub>4</sub> thereof) and West Kasipul/Konyango Kokal/1920 (<sup>1</sup>/<sub>4</sub> thereof), the latter parcel of land being registered in the name of the petitioner only. The owners of the said base Receiver have leased the portion of the land on which it stands for a term of 15 years from 1<sup>st</sup> February, 2002 at an annual rent of Kshs. 60,000/= with an agreed rent increment at 10% after every subsequent two years. The objector was of the view that the income thus generated ought to be shared among all the beneficiaries. However, on cross examination, the objector contended that because the said Receiver was situated on the two parcels of land, she only wanted the share of the income emanating from the portion which lies on West Kasipul/Konyango Kokal/6.

On the other hand, the petitioner was of the view that the estate should be shared equally between the two houses. As regards the income from the owners of the Base Receiver, the petitioner said that since the same is situated within his compound, the income generated by the station should belong to him exclusively.

As concerns West Kasipul/Konyango Kokal/150, the petitioner said that it should go to the first house and West Kasipul/Konyango Kokal/157 to the second house.

The parties engaged a valuer who valued the three properties inclusive of all developments thereon and gave the following valuations:

(a) **West Kasipul/Konyango Kokal/6**

**(3.25 acres) – Kshs. 6,400,000/=**

(b) **West Kasipul/Konyango Kokal/150**

**(0.625 acres) – Kshs. 150,000/=**

(c) **West Kasipul/Konyango Kokal/157**

**(0.50 acres) – Kshs. 50,000/=**

The deceased, having been a polygamous man who died intestate on 13<sup>th</sup> July, 1996, the distribution of his estate should be done pursuant to the provisions of **section 40** of the **Law of Succession Act** which states as hereunder:

**“40 (I) where an intestate has married  
more than once under any system of  
law permitting polygamy, his  
personal and household effects and  
the residue of the net intestate estate  
shall, in the first instance, be divided  
among the houses according to the  
number of children in each house, but  
also adding any wife surviving him as  
an additional unit to the number of  
children.”**

Both houses reside on West Kasipul/Konyango Kokal/6. The deceased had his homestead there also. The petitioner was given by the deceased land parcel number West Kasipul/Konyango Kokal/1920. That is where he built his house. His other six brothers have also put up their houses on portions of West

Kasipul/Konyango Kokal/6. All the daughters of the deceased are married. However, by law, they are entitled to a share of the estate.

Having taken into consideration all the relevant issues, I rule that West Kasipul/Konyango Kokal 6 should be divided into twenty units of more or less the same monetary value, each house getting ten (10) units so that every beneficiary gets a unit. In so doing, the subdivision should be done in such a way that as much as possible the beneficiaries who have settled thereon are not moved from the places where they have already put up their residences or rental houses. Considering that this property is situated within Oyugis town and a wide part of it fronts the main Kisii-Kisumu road and it stretches northwards to Oyugis town council offices, Oyugis Law courts and Oyugis Catholic church, the lower parts that are nearer the said road may be of higher value than the rest. It is therefore envisaged that the plots on the lower parts (those near the main road) will be smaller than the upper plots.

As regards the income from the B.T.S. station, a report dated 29<sup>th</sup> May, 2003 from the District Surveyor, Rachuonyo District, the base coverage on the ground is 10 square metres. 26.5% of the station lies on plot No. West Kasipul/Konyango Kokal/1920 and 73.5% on plot No. West Kasipul/Konyango Kokal/6. Although the petitioner said that the part of the station that is on parcel No. 6 stands on his home compound and therefore he should be entitled to all the rental income, I think the income should be shared between the petitioner, his brothers and the objector. It should be borne in mind that during his lifetime, the deceased gave to the petitioner parcel No. 1920 as aforesaid. **Section 42 of the Law of Succession Act** requires that such property be taken into account in determining the share of the net intestate estate accruing to a beneficiary. In that regard, I rule that the petitioner will be entitled to one quarter of the income payable by the B.T.S. owners and Ernest Oloo Osoro, Hellen Otieno Osoro, Elisa Nyakongo Osoro, Julius Onyango Osoro, Arthur Ogal Osoro, Paul Mboya Osoro and Peter Owino Osoro shall be entitled to share the remaining three quarters of the income.

Parcel No. West Kasipul/Konyango Kokal/150 shall go to the first house and shall be shared equally among all the beneficiaries in that house while West Kasipul/Konyango Kokal/157 shall go to the second house to be shared equally among all the beneficiaries therein.

The legal costs of this succession cause shall be borne by the estate of the deceased.

**DATED, SIGNED AND DELIVERED AND KISII THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2009.**

**D. MUSINGA**

**JUDGE.**

**19/11/2009**

Before D. Musinga, J.

Mobisa – cc

Mr. Ongige HB for Mr. Oguttu for the Petitioner

Mr. Bana for the Objectors.

**Court:** Judgment delivered in open court.

**D. MUSINGA**

**JUDGE.**