



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
PROBATE & ADMIN. 81 OF 1996
IN THE MATTER OF THE ESTATE OF JOHN MUIA KALII-DECEASED
RULING ON DISTRIBUTION

1. This Ruling relates to the distribution of the estate of the late John Muia Kalii who died on 8.3.1995. In his Ruling dated 14.11.2002, *Mwera, J.* found that the deceased's assets were as per a list provided in Form P&A 5 which is on record. That list reads as follows:-

Value

- a) Plot No. 230 Nairobi Dam Estate - Kshs. 2.5 million
- b) Plot No. 594/3/D Umoja Estate Nairobi - Kshs. 400,000/=
- c) Plot No. 24/Kariobangi Machakos - Kshs. 600,000/=
- d) Plot No. 2 Salama Market - Kshs. 500,000/=
- e) Plot No. 4 Salama Market - Kshs1,500,000/=
- f) Salama Corner Shop Plot - Kshs. 300,000/=
- g) Salama Market plot - Kshs. 300,000/=
- h) Salama (undeveloped) plot - Kshs. 200,000/=
- i) Salama Slaughter House plot - Kshs. 100,000/=
- j) Salama (undeveloped) Plot - Kshs. 150,000/=
- k) Katilini Hotel & Club Plot No. 1A - Kshs. 150,000/=
- l) Kalilini old shop Plot - Kshs. 120,000/=
- m) Katilini new shop plot - Kshs. 150,000/=
- n) Katilini Police Post Plot - Kshs. 200,000/=
- o) Katilini (unidentified) plot - Kshs. 150,000/=

- p) Katilini Kyaani shop - Kshs. 100,000/=
- q) Muvivye shop Plot - Kshs. 150,000/=
- r) Kathungu Bar & Restaurant plot - Kshs. 200,000/=
- s) U/U (undeveloped) plot - Kshs. 200,000/=
- t) U/U(undeveloped land) - Kshs .200,000/=
- u) Ngaamba Bar plot - Kshs. 100,000/=
- v) Athi River plot - Kshs.100,000/=
- w) Konza Ranch plot - Kshs. 500,000/=
- x) Matwikani plot(40 acres) - Kshs 200,000/=

Motor vehicles

- y) KRN 504 Peugeot - Kshs. 150,000/=
- z) KUN 088 Mazda - Kshs. 150,000/=
- aa) KMH 285 Toyota - Kshs. 100,000/=

MACHINERY

- bb) Electric Generator- Lister model
(Salama market) - Kshs. 4,000/=
- cc) Electric Generator Lister Model
(Kathungu market) - shs. 4,000/=
- dd) Kathungu Generator Rastor - Kshs. 1,000/=
- ee) Manual Grinding Machine (Rastor) - Kshs. 4,000/=
- ff) Dome Machine - Kshs. 4,000/=
- gg) Katilini Water Pump Lister - Kshs. 2,000/=
- hh) Kathungu Bore hole Machine (Lister)- Kshs. 8,000/=
- ii) Motor Bike - Kshs. 1,000/=
- jj) Sewing Machine- singer - Kshs. 4,000/=
- kk) 1 Television set (Big Size) - Kshs. 6,000/=
- ll) 2 Ploughs - Kshs. 50,000/=
- mm) I broke Machine - Kshs. 10,000/=

- nn)** Sugar Cane Crushing Machine - Kshs. 5,000/=
- oo)** Plastic Water Pipes(60) - Kshs. 6,000/=
- pp)** 2 Type Winters - Kshs. 10,000/=
- qq)** 2 Tools Boxes - Kshs. 500/=

SHARES

- rr)** Aimi Ma Kilungu - Kshs. 200,000/=
- ss)** Malili Ranch -2.5 shares - Kshs. 100,000/=
- tt)** Wingu Farm (Timau) - Kshs. 100,000/=
- uu)** Kilungu Holding - Kshs. 100,000/=
- vv)** Makongeni (3 shares) - Kshs. 200,000/=

BANK ACCOUNT

- ww)** Standard Chartered Bank Machakos
- xx)** Kenya Commercial Bank Machakos
- yy)** Standard Chartered Bank Kimathi Street, Nairobi

Total Estimated Value - **Kshs. 10,339,500/=**

2. As regards the deceased's survivors, the learned judge found that after hearing viva voce evidence on the subject, one Mbeneka Muia and one Mbenge Muia together with their children are beneficiaries of the deceased and are entitled to benefit from his estate. Specifically, the judge made the following orders with a view to bringing the dispute regarding the estate of John Muia Kalii to an end ;(*I am reproducing the order verbatim*)

“a. all the widows of the late Muia Kalii to be joint administrators of

his estate including Mbaudu in place of her deceased mother, Wasi. A grant to that effect to issue in 30 days.

- b. all his children to feature along their mothers as beneficiaries
- c. the list of all beneficiaries to be as was promised to be typed, signed and filed
- d. Mbeneka and Mbenge to be co-administratrices and their children to be beneficiaries also.
- e. assets as per P&A 5 field in the petition.
- f. both parties to appoint a valuer as agreed at the beginning of this hearing.
- g. there has a been a chaotic reception and use of rental income
- h. there was no evidence to prove intermeddling or to point to one person in that regard
- i. No sanction related to any intermeddling

j. The two to advocates arrange how rents should be collected and disbursed – at a small or reasonable commission.

k. The costs against the estate.”

3. Apparently the large family could not agree on all the above issues and on 7.4.2008, I ordered parties to file Affidavits on their proposed modes of distribution and so they did. I have perused the Affidavits and I note that Juliana Muia with the support of Mbenge Muia and Mbeneka Muia proposes that the estate would be distributed as follows; (*I am reproducing it verbatim*)

“ i. Kathungu Kiima-kiu to be shared equally between Mbenge

Muia, Mbeneka Muia, Mary Vose and Mbandu Muia on behalf of the deceased mother Anna Wausi the distribution to take into account each of the petitioner’s houses and development (title deed documents with Isaac Maweu should be presented to Court.

ii. Kiu Ranch – 5 acres and commercial plot at Kiu – 5 acres to be given to Mbeneka Muia and the plot to be sold and the proceeds to be shared by the 7 wives and their houses (documents are with Mbatha Muia who should produce them in court to ascertain the position).

iii. Aimi Ma Kilungu – 10 acres and commercial plot (documents with Isaac Maweu which is allegedly sold who should produce them in court. To be shared by Mary Vose and Matha Muia. Plot to be sold and shared by 7 wives and their houses.

iv. Malili Ranch – to be shared by Mbenge Muia and Juliana Muia and the plot to be sold and the proceeds to be shared between Mbenge Muia and Juliana Muia in order to be compensated what the two petitioners did not get at Aimi ma Kilungu and Kiu Ranch (documents are with Francisca Mbatha who should produce them in court).

v. Land at Konza (Ole Kasiwa) the land to be shared between Mbete Muia 5 acres, Mbandu for Wausi 5 acres and the balance of the land to be sold and the proceeds to be shared by the 7 wives houses (documents with Isaac Maweu who should produce them in court).

vi. Konza Ranch – to be given to Francisca Mbatha according to the wishes of the late John Kalii (title deed with Francisca Mbatha Muia)

vii. Land at Matwikani- to be given to Esther Mbete according to the wishes of the late John Kalii (documents with Isaac Maweu to be produced in court)

viii. Athi-River plot –whose title documents are with Isaac Maweu to be produced in court, to be sold and the proceeds to be shared among the 7 wives and their houses.

ix. Plot at Ngaama Market – to be given to Esther Mbete who has the documents of title.

x. Land and plot at Ulu market to be sold and the proceeds to be shared by the 7 houses (documents with Isaac Maweu to be produced in court)

xi. Wingu Farm at Meru (Timau) – land to be sold and proceeds to be shared by the 7 houses equally (documents with Isaac Maweu to be produced in court).

xii. Salama plot un-developed –each of the 7 wives to get an equal share of the plot, plot allegedly sold by Isaac Maweu who should produced documents of the plot in court.

xiii. Ngenda Location Ranching Company limited – land to be sold and shared between the 7 wives, receipt for the land is with me and I attach a copy of the same.

xiv. Plot No. 230 Dam Estate –Nairobi-rent to be accounted for by Esther Mbete and Isaac Maweu from 1995 June to date – to be shared to the other 5 wives and the plot to be sold to cover the professional fees and disbursements of the firms of Francis Manthi Masika Advocate and Francis Mwanza Mulwa and the balance of the proceeds to be shared by the 7 wives (houses) (documents are with Isaac Maweu who should produce them to the court).

xv. Plot No. 594/3/b –Umoja Estate – to be sold and be divided among the 7 wives equally (documents are with Isaac Maweu who should produce them to the court).

xvi. Plot No. 28 Kariobangi Estate Machakos Town – to be shared between Mbeneka Muia and Mbete Muia, rent collected from 1995 to date to be shared among the 7 wives and rent was collected by Francisca Mbatha and Isaac Maweu Muia.

xvii. Katilini plot – to be shared by Mary Vose and Anna Wausi Mbandu Muia rent collected by Isaac Maweu to be shared among the 7 wives .

xviii. Plot No. 1A called Chini ya Mnazi at Katilini to be given to the wife of the late Morris Kamula Muia (deceased) called Rhoda Morris Muia according to the wishes of the deceased.

xix. Plot at Katilini, former Police Post to be given to Juliana Muia, Isaac Maweu to account for the rent collected from 1995 to date. (documents are with Isaac Maweu to be produced in court).

xx. Plot at Katilini that needs repairs to be shared between Mbeneka Muia and Mbenge Muia.

xxi. The undeveloped Plot at Katilini to be sold and proceeds to be shared equally between the 7 wives (houses).

xxii. Plot at Katilini at Chaani to be given to Mbatha Muia.

xxiii. Kilungu Holdings shares to be sold and proceeds shared between the 7 wives.

xxiv. Motor vehicles and machinery.

a) Tractor KNC 925 with a Trailer was sold by Isaac Maweu to produce the sale agreement and the proceeds in court to be shared by the 7 wives.

b) Peugeot Station Wagon KRN 504}

c) Toyota Corolla KAH 295 }

d) Mazda 1600 088 }

(all documents are with Isaac Maweu who sold them and should account for them and if sold to produce the proceeds to court.)

e) Lister Electrical Generator at Mbeneka Muia’s place to be sold and proceeds to be shared equally between the 7 wives (houses).

f) Lister Electrical Generator with Maweu Muia to be sold and proceeds to be shared equally between the 7 wives (houses)

g) Big Lister Generator with water pump for borehole with Isaac Maweu and Esther Mbete who should produce them with documents, to be sold and the proceeds to be shared by 7 wives.

h) Lister water pump at Kathungu home for borehole machine with Isaac Maweu to be sold and the proceeds to be shared equally between the 7 wives.

- i) Manual Grinding Machine at the home of Mbeneka Muia to be sold and proceeds to be shared by the 7 wives.
 - j) Dome Machines kept by Isaac Maweu to be sold and proceeds shared by the 7 wives.
 - k) Lister water pump at Katilini with Isaac Maweu }
 - l) Motor bike }
 - m) Two sewing machines, butterfly model }
 - n) 1 Television set }
 - o) Two ploughs }
 - p) Sugar cane crushing machine at Katilini market }
- (all with Isaac Maweu Muia, to produce them and documents to be sold and proceeds shared by 7 wives]
- q) 60 pieces of plasting water pipes]
 - r) 2 typewriters machine]
 - s) 2 Tool boxes-]
- (with Isaac Maweu to be sold and proceeds shared by the 7 wives).**

BANK ACCOUNTS

- i. Standard Chartered Bank Ltd Machakos
- ii. Standard Chartered Bank Ltd at Kimathi street Nairobi.
- iii. Kenya Commercial Bank of Kenya at Machakos

(all the money to be shared among the 7 houses (wives)

iv. The safe to be sold and proceeds shared among the 7 wives. The keys are with Isaac Maweu.”

4. The justification for this proposal is that it would be better to distribute the estate among the deceased’s wives or houses and then each house will internally distribute its share amongst the beneficiaries in that house.

5. In her affidavit sworn on 23.6.2008, Mary Vose Muia denies that Mbenge Muia and Mbeneka Muia and /or their children are entitled to any part of the estate but I have stated elsewhere above *Mwera,J.* settled that question and without his findings and orders being otherwise formally challenged, I cannot revisit the issue and I will quickly dismiss Mary’s contentions in that regard. In any event, her proposal on distribution is as follows;- (*again I am reproducing it verbatim*)

“

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Ø Mary Vose Plot No. 2B Salama/Katilini -14 acres

Ø Catherine Mbandu (Wausi) Plot No. 3A Salama /Katilini -14 acres

- Ø Esther Mbete Plot No. 4B Salama/Ngaamba -27 acres
- Ø Francisca Mbatha Plot No. 4A Salama/Konza- 10 acres
- Ø Juliana Nzisa Plot No. 2A Salama/ Makongeni – 5 acres
- Ø Magdalene Mbeneka Plot No. 2 Katilini/Katilini- 7 acres
- Ø Ruth Mbenge Plot No. 1 A Katilini/Katilini- 7 acres
- Ø Esther Mbete }
- Ø Maweu Muia } -Kariobangi/Machakos

Plots not constructed at Salama market-2 acres to be shared at 30x100, 25x50 to the following;-

- Ø Mary Vose
- Ø Wausi (Catherine Mbandu)
- Ø Esther Mbete
- Ø Francisca Mbatha
- Ø Juliana Muia
- Ø Costs for lawyers
- Ø Maweu Muia
- Ø Mbandu Muia
- Ø Florence Muia
- Ø Eunice Muia
- Ø Costs for Lawyers
- Ø Julius Muia
- Ø Musembi Muia
- Ø Anna Maweu
- Ø Ngina Muia
- Ø Esha Mohamed
- Ø Charles Kalii
- Ø Magdalene Mbeneka
- Ø Ruth Mbenge
- Ø Alice Muia

- Ø Mwangangi/Mutuku Muia
- Ø Damaris Mutua
- Ø Nduku Muia
- Ø Scrap cars to be sold and shared equally
- Ø Machines to be sold and shared equally
- Ø Katilini home(where deceased was buried three pieces of land, two pieces of land to be distributed amongst all wives.

-I piece of land to be shared between Charles Kalii/John Muia Kalii

- Ø John Muia Kalii (late) Shares to be for all the daughters and grandchildren.

Ole Kasua Farm to be shared amongst the following:-

- Ø Mary Vose
- Ø Anna Wausi (deceased)
- Ø Esther Mbeti
- Ø Francisca Mbatha
- Ø Juliana Nzisa
- Ø Bank Account Standard Bank to cater for school fees.

-Assets given to individuals by the late John Mua Kalii(deceased) as follows:-

Commercial Plots.

- Ø Esha Mohamed Plot No. 3B/Salama Market
- Ø Francisca Mbatha Muia Plot No. 13 Katilini Market
- Ø Muia Maweu – Dam Nairobi
- Ø Mwendwa Muia –Umoja Nairobi
- Ø Morris Kamula No. 1A Katilini Market
- Ø Julius Kingoo Muia Plot No. 2C Salama Market
- Ø Musembi/Florence Muia – Muvivye

Agricultural Plots

- Ø Mwanzia Muia – Kiu
- Ø Esther Mbeti –Ngaamba
- Ø Francisca Mbatha – Konza (Ngiini)

- Ø Juliana Nzisa – Makongeni
- Ø Vose/Wausi – Katilini
- Ø Musembi Muia Malili
- Ø Mwanyani Plots not constructed to be sold and shared amongst wives.
- Ø Charles Kalii – Plot No. 1 Katilini Market.”

6. Out of Mary’s Proposal can be seen elements of bequests made by the deceased prior to his death. In her Affidavit sworn on 18.7.2008,Juliana Muia and those in her camp agree with some bequests and have deponed at paragraph 10 and 14 as follows; (*again I am quoting verbatim*)

“10.

- a) Esther Mbete- Ngaamba Land measuring about 27 acres
- b) Juliana Muia (myself) – Makongeni 45 acres given earlier and title given.
- c) Francisca Mbatha Muia –Konza Land measuring about 10 acres
- d) Morris Kamula –Plot No.1A Katilini Market and Umoja –Nairobi
- e) Julius King’oo Muia –Plot No. 2C Salama Market
- f) Charles Kalii. Plot No. 1 Katilini Market

14.

- i. Plot No. 4A – night club to Mbatha Muia
- ii. Plot No. 4B –Butchery to Mbete Muia
- iii. Plot No. 3A – Coast Hotel to Mbandu Muia
- iv. Plot No. 2A Usalama Hotel to Juliana Muia (already given before the deceased death).
- v. Plot No. 2B –Usalama Bar to Vose Muia
- vii. Plot no. 2C - High shop to Mbenge Muia
- vii. Wavinye shop plot No. 3- to Mbeneka Muia.”

7. Having set out the rival claims to the estate, I should then proceed and set out the law on the subject at hand. Section 40 of the Law of Succession Act provides as follows:-

“1) 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.

2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in section 35 to 38.”

8. The framers of the above section explained its language in the following words *picked from the*

Report of the Commission on the Law of Succession 1968:

“In Islamic law, the fact that the deceased was a polygamist makes no difference to the rules of intestate succession since the widow’s share (one eighth or one quarter depending on whether or not there are children) is simply divided equally amongst the widows.

In customary law, on the other hand, the matter is complicated by the rules of division amongst the “house” by which there is an equal division amongst the “houses” irrespective of the number of children in each “house”. We believe this rule to be highly unfair and discriminatory.

We have considered the possibility of applying to the estate of a polygamist the same rules of intestacy that we have recommended for a monogamist. This would mean that the life interest given to the widow would have to be shared by the several widows and the power of appointment exercisable by the widows jointly. Much as we would have preferred to have similar rules for monogamous and polygamous households, we do not think that it would be practicable to have several widows sharing a life interest and a power of appointment. Human nature being what it is, each widow is bound to prefer her own children and such a system is bound to lead to disputes and endless litigation.

We think that is necessary, for the purpose of determining beneficial interests, to make a division of the net estate between the “houses”. This accords with customary law and will work out well in practice since the property of each “house” is normally treated as independent and separate from the other. As to the mode of division, we have already stressed that the present system of equal division irrespective of the number of children in each “house” is inequitable. We believe that the fairest division would be one based on the number of children in each “house” but also adding to the number of children, the wife as an additional dependants especially to cater for the wife who has no children. This would mean that a “house” with a wife and two children would count as three units, a “house” with a wife and one child would count as two units and a “house” with a wife and no children as one unit, etc. In making the division, we think it necessary to take into account any property that had already been allotted to the “house” by the husband before he died. Having made the division between the “houses”, the rules of distribution within the “houses” would be as in a monogamous household.”

9. From the above explanation, it is again clear that the law does not favour the proposal by Mary Vose Muia which is haphazard, inequitable and unclear. I say this, with respect, because her proposal includes items like “Bank Account, Standard Bank to cater for School Fees.” The amounts involved and to whom the school fees are due is not stated. There is an item of distribution called “special case – Charles Kalii the only surviving brother to the late John Muia plot No. 1 Katilini Market”. It is unclear why Charles Kalii is entitled to any part of the estate and whether he was a dependant of the deceased in any event. I have elsewhere said that *Mwera.J.* determined the beneficiaries to the estate and Charles Kalii is not one of them. Having so said, and notwithstanding my comments, I see that Juliana and those in her camp have no objection to Charles Kalii inheriting Plot No. 1 Katilini Market and this is a good point for me to order distribution as follows:-

10. Parties agree that the following properties should go to the following persons:-

- “a) Esther Mbeté- Ngaamba Land measuring about 27 acres
- b) Juliana Muia – Makongeni 45 acres given earlier and title given.
- c) Francisca Mbatha Muia –Konza Land measuring about 10 acres.
- d) Morris Kamula –Plot No.1A Katilini Market and Umoja –Nairobi
- e) Julius King’oo Muia –Plot No. 2C Salama Market
- f) Charles Kalii. Plot No. 1 Katilini Market

g) Plot No. 4A – night club to Mbatha Muia

h] Plot No. 4B –Butchery to Mbete Muia

i] Plot No. 3A – Coast Hotel to Mbandu Muia

j] Plot No. 2A Usalama Hotel to Juliana Muia (already given before the deceased death).

K] Plot No. 2B –Usalama Bar to Vose Muia

l.] Plot no. 2C - High shop to Mbenge Muia

m] Wavinye shop plot No. 3- to Mbeneka Muia

11. That being the case, the remainder of the properties would need to be distributed amongst the seven widows of the deceased as” houses”. I say this because the family is large and the properties are not the same size nor are they of the same value. However, noting the explanation and justification given by Juliana Muia, I think that her proposal is logical and lawful and in agreeing with that proposal I am reminded of the now famous words of *Omolo J.A* in Rono vs Rono, C.A, No 66 of 2002 where he said :-

“ I have had the advantage of reading in draft form the Judgment prepared by *Waki,J.A.* and while I broadly agree with that judgment, I nevertheless wish to point out that I do not understand the learned judge to be laying down any principle of law that the Law of Succession Act, Cap 160 of the Laws of Kenya, lays down as a requirement that heirs of a deceased person must inherit equal portions of the estate where such a deceased dies intestate and that a judge has no discretion but to apply the principle of equality as was submitted before us by Mr. Gicheru. I can find no such provision in the Act. Section 40(1) of the Act provides that:-

“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”

My understanding of that section is that while the net intestate estate is to be distributed according to houses, each house being treated as a unit, yet the judge doing the distribution still has discretion to take into account or consider the number of children in each house. If Parliament had intended that there must be equality between houses, there would have been no need to provide in the section that the number of children in each house be taken into account.

Nor do I see any provision in the Act that each child must receive the same or equal portion. That would clearly work an injustice particularly in case of a young child who is still to be maintained, educated and generally seen through life. If such a child, whether a girl or a boy, were to get an equal inheritance with another who is already working and for whom no school fees and things like that were to be provided, such equality would work an in justice and for my part, I am satisfied the Act does not provide for that kind of equality.

What I understand *Waki,J.A.* to be saying is that in the circumstances of this particular case, there was no reasonable factual basis for drawing a distinction between the sons on the one hand and the daughters on the other hand. Subject to what I have said herein; I agree with the Judgment of *Waki J.A* and the orders proposed by him. Those orders shall be the orders of the court.”

This is the approach that I intend to take in this long-drawn out dispute.

12. The above being my findings and appreciating the law as I have, the estate herein shall be distributed as follows:-

“i. Kathungu Kiima-kiu to be shared equally between Mbenge

Muia, Mbeneka Muia, Mary Vose and Mbandu Muia on behalf of their deceased mother Anna Wausi the distribution to take into account each of the petitioner’s houses and development.

- ii. Kiu Ranch – 5 acres and commercial plot at Kiu – 5 acres to be given to Mbeneka Muia and the plot to be sold and the proceeds to be shared by the 7 wives –houses.
- iii. Aimi Ma Kilungu – 10 acres and commercial plot to be shared by Mary Vose and Matha Muia.
- iv. Malili Ranch – to be shared by Mbenge Muia and Juliana Muia and the plot to be sold and the proceeds to be shared between Mbenge Muia and Juliana Muia in order to be compensated what the two petitioners did not get at Aimi ma Kilungu and Kiu Ranch.
- v. Land at Konza (Ole Kasiwa) the land to be shared between Mbete Muia 5 acres, Mbandu for Wausi 5 acres and the balance of the land to be sold and the proceeds to be shared by the 7 wives houses.
- vi. Konza Ranch – to be given to Francisca Mbatha according to the wishes of the late John Kalii.
- vii. Land at Matwikani- to be given to Esther Mbete according to the wishes of the late John Kalii.
- viii. Athi-River plot to be sold and the proceeds to be shared among the 7 houses.
- ix. Plot at Ngaama Market – to be given to Esther Mbete.
- x. Land and plot at Ulu market to be sold and the proceeds to be shared by the 7 houses.
- xi. Wingu Farm at Meru (Timau) – land to be sold and proceeds to be shared by the 7 houses equally.
- xii. Salama plot un-developed –each of the 7 wives to get an equal share of the plot.
- xiii. Ngenda Location Ranching Company limited – land to be sold and shared between the 7 wives.
- xiv. Plot No. 230 Dam Estate –Nairobi-rent to be accounted for by Esther Mbete and Isaac Maweu from 1995 June to date – to be shared to the other 5 wives and the plot to be sold to cover the professional fees and disbursements of the firms of Francis Manthi Masika Advocate and Francis Mwanza Mulwa and the balance of the proceeds to be shared by the 7 wives (houses)
- xv. Plot No. 594/3/b –Umoja Estate – to be sold and be divided among the 7 wives equally.
- xvi. Plot No. 28 Kariobangi Estate Machakos Town – to be shared between Mbeneka Muia and Mbete Muia, rent collected from 1995 to date to be shared among the 7 wives and rent was collected by Francisca Mbatha and Isaac Maweu Muia.
- xvii. Katilini plot – to be shared by Mary Vose and Anna Wausi Mbandu Muia rent collected by Isaac Maweu to be shared among the 7 wives .
- xviii. Plot No. 1A called Chini ya Mnazi at Katilini to be given to the wife of the late Morris Kamula Muia (deceased) called Rhoda Morris Muia according to the wishes of the deceased.
- xix. Plot at Katilini, former Police Post to be given to Juliana Muia, Isaac Maweu to account for the rent collected from 1995 to date.
- xx. Plot at Kaitilini that needs repairs to be shared between Mbeneka Muia and Mbenge Muia.
- xxi. The undeveloped Plot at Katilini to be sold and proceeds to be shared equally between the 7 wives

(houses).

xxii. Plot at Katilini at Chaani to be given to Mbatha Muia.

xxiii. Kilungu Holdings shares to be sold and proceeds shared between the 7 wives.

xxiv. **Motor vehicles and machinery.**

a. Tractor KNC 925 with a Trailer was sold by Isaac Maweu to produce the sale agreement and the proceeds in court to be shared by the 7 wives.

b. Peugeot Station Wagon KRN 504 }

c. Toyota Corolla KAH 295 }

d. Mazda 1600 088 } to be sold and proceeds shared among the 7 houses.

e. Lister Electrical Generator at Mbeneka Muia's place to be sold and proceeds to be shared equally between the 7 wives (houses).

f. Lister Electrical Generator with Maweu Muia to be sold and proceeds to be shared equally between the 7 wives (houses)

g. Big Lister Generator with water pump for borehole with Isaac Maweu and Esther Mbete, to be sold and the proceeds to be shared by 7 wives.

h. Lister water pump at Kathungu home for borehole machine to be sold and the proceeds to be shared equally between the 7 wives.

i. Manual Grinding Machine at the home of Mbeneka Muia to be sold and proceeds to be shared by the 7 wives.

j. Dome Machines kept by Isaac Maweu to be sold and proceeds shared by the 7 wives.

k. Lister water pump at Katilini }

l. Motor bike }

m. Two sewing machines, butterfly model }

n. 1 Television set }

o. Two ploughs }

p. Sugar cane crushing machine at Katilini market }

(to be sold and proceeds shared by 7 wives]

q. 60 pieces of plasting water pipes }

r. 2 typewriters machine }

s. 2 Tool boxes- }

all to be sold and proceeds shared by the 7 wives.

BANK ACCOUNTS

- i. Standard Chartered Bank Ltd Machakos
- ii. Standard Chartered Bank Ltd at Kimathi street Nairobi.
- iii. Kenya Commercial Bank of Kenya at Machakos
- iv. The safe to be sold and proceeds shared among the 7 wives. The keys are with Isaac Maweu
(all the money to be shared among the 7 houses (wives))

13. Further, the following properties shall go to the parties names as agreed:-

- a) Esther Mbete- Ngaamba Land measuring about 27 acres
- b) Juliana Muia – Makongeni 45 acres given earlier and title given.
- c) Francisca Mbatha Muia –Konza Land measuring about 10 acres.
- d) Morris Kamula –Plot No.1A Katilini Market and Umoja –Nairobi
- e) Julius King’oo Muia –Plot No. 2C Salama Market
- f) Charles Kalii. Plot No. 1 Katilini Market
- g) Plot No. 4A – night club to Mbatha Muia
- h] Plot No. 4B –Butchery to Mbete Muia
- i] Plot No. 3A – Coast Hotel to Mbandu Muia
- j] Plot No. 2A Usalama Hotel to Juliana Muia (already given before the deceased death).
- K] Plot No. 2B –Usalama Bar to Vose Muia
- l.] Plot no. 2C - High shop to Mbenge Muia
- m] Wavinye shop plot No. 3- to Mbeneka Muia

14. Finally, in any large estate, implementation of a distribution module may not be easy and so I shall grant liberty to any party to apply but with a view only to affecting my orders in practical terms.

15. The grant issued herein is confirmed in the above terms and each party will bear its costs.

16. Orders accordingly.

Dated and delivered at Machakos this 12th day of **November 2008**.

Isaac Lenaola

Judge

In the presence of: Mr Masika for Petitioner

Mr. Kamanda h/b Mr. Mulwa for objectors.

Isaac Lenaola

Judge olding