



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

**Succession Cause 44 of 1999**

**JAMES WANGA MUMALI.....PETITIONER**

**VERSUS**

**MUMALI PHILIP MAHERO.....OBJECTOR**

**DECISION OF THE COURT**

On 1.12.2004, the Petitioner, James Wanga Mumali, and the Objector, Mumali Philip Mahero, recorded a consent in this cause in which they agreed that the court should peruse the Petitioner's application dated 6.2.2002 and the proposals it contains and also the affidavit of the Objector and the proposals it contains and make a decision binding on the parties on the distribution of the estate of the deceased without the need of the parties giving further evidence, hence this decision.

The deceased, Washitso Wanga, died in 1931. He left the piece of land known as S.Wanga/Sigalame/867 which measures 5.3 acres. It is still registered in his name. A Grant of letters of Administration intestate was made on 19.3.1999 to James Wanga Mumali, the Petitioner.

The deceased was survived by two brothers namely Mumali Wanga and Maurice Mahero. Mumali Wanga, now deceased was the father of the Petitioner. Maurice Mahero, who is alive, has three sons namely the Objector and the latter's two brother's Protus Omukanya and Gabriel Omeno.

Mumali Wanga, the father of the Petitioner had five sons namely the Petitioner (James Wanga Mumali), Bernard Mumali, Asumwa A. Wanga, Macmillah E. Mumali, and Ernest M. Mumali.

The Petitioner's proposal was that the deceased's land be distributed among the sons of his father in almost even shares to the exclusion of the sons of his father's brother, namely, the three sons of Maurice Mahero.

The Objector's proposal on the other hand was that the deceased's land be divided into two equal parts and each part be distributed among the sons of each house of the two brothers of the deceased. That proposal while more equitable than that proposed by the Petitioner in that it embraces all the heirs also results in inequality of shares as the sons of the father of the Petitioner are five while those of the father of the Objector are only three.

It is my considered view that all the sons of the two brothers of the deceased should take in equal shares so that in the result each will take about 0.662 of an acre. It is my decision and I order that the deceased's land be distributed to the sons of his two brothers in equal shares. Accordingly, the parcel of land known as S.Wanga/Sigalame/867 shall be partitioned into two portions one of 3.3125 acres which shall be registered in the name of the Petitioner who shall hold it in trust for himself and his four brothers all of whom shall be entitled to equal shares in it.

The other portion of 1.9875 acres shall be registered in the name of the Objector who shall hold it in trust for his two brothers and himself all of whom shall take in equal shares. There shall be no order as to costs. Dated at Kakamega this 25th day of Feb. 2005

G.B.M. KARIUKI

JUDGE