



REPUBLIC OF KENYA



**KENYA LAW**  
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**In re Estate of Osundwa Chitechi (Deceased) (Succession Cause  
357 of 1989) [2024] KEHC 1533 (KLR) (16 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1533 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
SUCCESSION CAUSE 357 OF 1989  
PJO OTIENO, J  
FEBRUARY 16, 2024**

**IN THE MATTER OF**

**JOHN OMULAMA OSUNDWA ..... 1<sup>ST</sup> PETITIONER  
NATHAN MUMIA SHIUNDU ..... 2<sup>ND</sup> PETITIONER  
JOHN OMULAMA OSUNDWA ..... 3<sup>RD</sup> PETITIONER**

**RULING**

1. Pursuant to the partial ruling dated the 31.10.22, parties were called upon to address the Court on what share of which land of the estate Maurice Chitechi Osundwa, John Mulama Osundwa, Musungu Osundwa And Dickson Osundwa should get as their inheritance in intestacy.
2. Pursuant to that direction parties filed several affidavits as follows: -
  1. Peter Kimaruti Lutta sworn on 5.01.2023
  2. James Mukolwe Wamkoya sworn on 9.3.2023
  3. Nathan Shiundu Mumia sworn on 19.4.2023
  4. George Omumia Osundwa sworn on 19/4/2023
  5. Joint Affidavit sworn by John Omulama Osundwa, Dickson Shiundu Osundwa, Ambrose Osundwa and Maxmillah Odero Chitechi on 8/11/2022.
3. Of the five Affidavits, it is the joint Affidavit which appear to comply with the ruling of 31.10.2022 for it confines itself to the determined fact that only the four named sons were entitled to the parcel of land known as N.Wanga/Koyonzo/534 and propose that each of the four named sons gets an equal share of 11¼ acres.
4. On his part Peter Kimaruti Lutta, a grandson to the deceased by virtue being son to John Lutta Osundwa, contends that by the Court's decision dated 10.3.2016, the property was ordered to be



shared equally among all the male children of the deceased. Pursuant to which decision, there was a consultative meeting of the family which agreed on the mode of sharing. On that mode he exhibited an alleged agreement sharing out the land among the nine (9) sons. That handwritten agreement is marked “PKL 03” while the ruling upon which it is grounded is marked “PKL 02”. From the agreement, each son was to get a portion measuring four (4) acres.

5. James Mukolwe Wamkoya on his part contend in the filed affidavit that his father, Francis Mukolwe Osundwa, who died on 13.6.2021, had a share of four (4) acres on the land which the family had entrusted upon him with no instructions to part with any share thereof.
6. Nathan Mumia Osundwa swore a twenty (20) paragraphed affidavit and bemoans the long stay of the matter in Court and the death of beneficiaries as the only source of confusion caused by grandchildren whose parents had got independent shares wanting to get more from the estate to the detriment of others. He also, like James Mukolwe Wamkoya, and Peter Kimaruti Lutta insists on the decision of the Court dated 10.11.2016 which gave all male children of the deceased equal share in the estate and contends that all sons have definite portions on the property as given by the deceased. He insists that the ruling of 2016 be honoured and that litigation ought to come to an end.
7. George Omumia Osundwa on his part also took the same position as Nathan, James and Peter while insisting that the land was shared out in 1984 at a family meeting convened by the executors and in accordance with the wishes of the deceased and should be respected because at a later meeting held on 6.3.2021 all beneficiaries met and agreed on sharing in terms of a document annexed and marked “GOO 1”, which the Court should be hesitant to interfere with. He then alleges that all have acquired property rights (sic) (prescriptive rights), over their respective portions occupied.
8. By the partial ruling dated 31.10.2022, the Court in reviewing the ruling of 10.11.2016, the Court said: -

“... I have read the ruling by my brother C. K. Kariuki, J. and I note that there was no taking into account the benefits found to have been vested upon the persons named at paragraph 9 of the ruling. The court appreciates the rationale of Section 42 to be the principle of equal sharing in intestates. For the reasons that admitted gifts inter vivos were not taken into account, there is a clear error present on the face of the record which merits and calls for review.

However, there is a group of four people who were held to have been apportioned land without specifics on which land and how much of it they were apportioned.

In order that the spirit of equal sharing is achieved, I do review the ruling. However, because none of the parties has told the court in details what the four said to have been apportioned land got, it is directed that both sides file Affidavits limited to the question how much of which land was apportioned to Maurice Chitechi Osundwa, John Mulama Osundwa, Musungu Osundwa And Dickson Osundwa. That be done within thirty (30) days from today for the matter to be mentioned on 6.12.2022.”

9. There should be no doubt that the decision of 10.11.2016 was reviewed and the scheme of distribution therein made was interfered with to the extent that only the four named sons would get shares in N.Wanga/Koyonzo/534. For that reason, to insist on the earlier decision subsequent to its review would be to ask the Court to review an order made on review. That the law forbids. As of today, the scheme of distribution must be in accordance with the decision of 31.10.2022.



10. Based on that decision, the property of the estate, N. Wanga/Koyonzo/534 shall be shared in accordance with paragraph 10 of the ruling. It being disclosed in the joint Affidavit of John Omulama Osundwa, Dickson Shiundu Osundwa, Ambrose Osundwa and Maxmillah Odero Chitechi that Maurice Chitechi Osundwa is dead, let the property be shared between the four named sons with the share of the deceased son being given to his two daughters-in-law.
11. Let the Certificate of Confirmation of Grant be issued forthwith to enable the administrators transmit the estate to those entitled within ninety (90) days from today.
12. Mention on 4.6.2024.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA, THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**PATRICK J. O. OTIENO**

**JUDGE**

In the presence of:

Olonyi for Sichangi for the Petitioners

Court Assistant: Polycap Mukabwa

