



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
P & A CAUSE NO. 14 OF 2003
IN THE MATTER OF THE ESTATE OF CHRISTOPHER WAWIRE MAUDO-DECEASED
ALBERT MANG'OLI WAWIRE.....PETITIONER/ADMINISTRATOR
VERSUS
CAROLYNE NABWILE WAWIRE.....OBJECTOR/ADMINISTRATIX
JUDGMENT

The late Christopher Wawire Maudo died intestate on 3rd of June, 1987. He was a polygamist married to two wives; Dorcas Wawire (now deceased) (1st house) and Carolyne Nabwile Wawire (2nd house). He had the following children;

1st house-

- a. Dorcas wawire-Deceased
- b. Albert Wawire
- c. Jane Wawire
- d. Mary Wawire
- e. William Wawire
- f. Pamela Wawire
- g. Grace Wawire
- h. Emily Wawire
- i. Boaz Wawire
- j. Lilian Wawire

2nd house

- a. Carolyne Nabwile Wawire-Widow
- b. Kennedy Wawire
- c. Jacob Wawire

The deceased owned the following properties;

| | |
|------------------------------|-----------|
| a. E. Bukusu/S. Kanduyi/1252 | 0.81 Ha |
| b. E. Bukusu/S. Kanduyi/1820 | 1.62 Ha |
| c. E. Bukusu/S. Kanduyi/1664 | 0.16 Ha |
| d. Bungoma Municipality/38 | 0.0550 Ha |
| e. Bungoma Municipality/28 | 0.14 Ha |
| f. E. Bukusu/S. Kanduyi/2565 | 0.06ha |
| g. Bunyala/Sidikho/629 | 2.83ha |
| h. Bunyala/Budonga/297 | 2.80 Ha |
| i. E. Bukusu/S. Kanduyi/1430 | 2.40 Ha |
| j. E. Bukusu/S. Kanduyi/1884 | 0.09 Ha |

The petitioner took out letters of administration which were later revoked and a grant in the names of both the petitioner and the objector issued on 23rd July, 2009 and a Certificate of Confirmation of Grant issued on 15th June, 2010.

The petitioner is the deceased's surviving son after his biological mother (Dorcas Wawire-Deceased) and a brother passed on while the objector is the only surviving widow and she had 2 sons with the deceased.

By directions of this court, both parties were directed to file their respective mode of distribution signed by the beneficiaries who agreed with their mode of distribution. Albert Mangoli wawire from the 1st house filed the following mode of distribution.

a. E. Bukusu/s. Kanduyi/1820-1.62 Ha

Albert Mang'oli 0.81 Ha

William Wechuli 0.81 ha

b. Bunyala/Budonga/297-2.8 Ha

Albert Mang'oli 1.2 ha

Lilian Wawire 0.8 ha

Grace Wawire 0.8 ha

c. Bungoma Municipality/38 -0.0550 Ha

Lilian wawire

d. E. Bukusu/ S. Kanduyi/1844- 0.05 Ha

Emily Wawire

e. E. Bukusu/s. kanduyi/1664-0.05 Ha

Grace Wawire

f. E. Bukusu/S. Kanduyi/1252--0.81 Ha

Pamela Wawire

g. Bunyala/Sidikho/629-2.8 Ha

William Wechuli 1.0 ha

Pamela Wawire- 1.0 ha

Emily Wawire 0.83 ha

The objector Carolyne Nabwile Wawire from the 2nd house filed the following proposal;

- a. One half of E. BUKUSU/S. KANDUYI/1252 -0.81 Ha
- b. One half of E. BUKUSU/S. KANDUYI/1820-1.62 Ha
- c. One half of E. BUKUSU/S. KANDUYI/1664-0.16 Ha
- d. One half of BUNGOMA MUNICIPALITY/38-0.055 Ha
- e. One half of BUNGOMA MUNICIPALITY/28-0.14 Ha
- f. One half of E. BUKUSU/S. KANDUYI/2565-0.06 Ha
- g. One half of BUNYALA/BUDONGA/297-2.8 Ha
- h. One half of BUNYALA/SIDIKHO/629- 2.83 Ha
- i. One half of E. BUKUSU/S. KANDUYI/1430- 2.40 Ha
- j. One half of E. BUKUSU/S. KANDUYI/1884-0.09 Ha

The deceased estate comprises of 10 parcels of land. Albert Mangoli Wawire has distributed 7 of the parcels to the 1st house and 3 of the parcels to the 2nd house. Carolyne Nabwile Wawire in her distribution proposes that each of the parcels be divided between the two houses who will then distribute to the children in each house.

Her proposal is that all the parcels be divided equally between the houses with each house getting half share of each property.

The law under Section 40 of the Law of Succession Act cap 160 provides for the distribution of a polygamous estate. For the avoidance of doubt, section 40 provides as follows:

40. Where intestate was polygamous

(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 sections 35 to 38.

Considering all the evidence and submissions, the court distributes the estate of the deceased as follows;

1st house-Dorcas Wawire and her children

- a. E. BUKUSU/S. KANDUYI/1252 -0.405 Ha
- b. E. BUKUSU/S. KANDUYI/1820-0.810 Ha
- c. E. BUKUSU/S. KANDUYI/1664-0.080 Ha
- d. BUNGOMA MUNICIPALITY/38-0.0275 Ha
- e. BUNGOMA MUNICIPALITY/28-0.070 Ha
- f. E. BUKUSU/S. KANDUYI/2565-0.030 Ha
- g. BUNYALA/BUDONGA/297-1.40 Ha
- h. BUNYALA/SIDIKHO/629- 1.415 Ha
- i. E. BUKUSU/S. KANDUYI/1430- 1.20 Ha

j. E. BUKUSU/S. KANDUYI/1884-0.045 Ha

2nd house-Carolyne Nabwile Wawire

a. E. BUKUSU/S. KANDUYI/1252 -0.405 Ha

b. E. BUKUSU/S. KANDUYI/1820-0.810 Ha

c. E. BUKUSU/S. KANDUYI/1664-0.080 Ha

d. BUNGOMA MUNICIPALITY/38-0.0275 Ha

e. BUNGOMA MUNICIPALITY/28-0.070 Ha

f. E. BUKUSU/S. KANDUYI/2565-0.030 Ha

g. BUNYALA/BUDONGA/297-1.40 Ha

h. BUNYALA/SIDIKHO/629- 1.415 Ha

i. E. BUKUSU/S. KANDUYI/1430- 1.20 Ha

j. E. BUKUSU/S. KANDUYI/1884-0.045 Ha

This being a family matter, each party to bear their own costs.

DATED AT BUNGOMA ON THIS 4TH DAY OF JUNE, 2021

S. N RIECHI

JUDGE