

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION CAUSE NO. 661 OF 2011

IN THE MATTER OF THE ESTATE OF WILFRED NYONGESA MAONGA (DECEASED)

RULING

1. On 7th February 2020 I delivered a judgment wherein I postponed determination of an application for confirmation of grant herein, dated 29th June 2012, to allow the administrators comply with Rule 40(8) of the Probate and Administration Rules, by filing consents in Form 17, which was an error, and should have been Form 37.

2. Since then, the parties have filed several Forms 37, on 13th March 2020 and 16th November 2020. The first to one to be filed is dated 30th March 2020. It lists 10 individuals as the beneficiaries of 4 assets. The assets shared out are Bunyala/Namirama/478, 519, 983 and 2113. The beneficiaries are named as Alice Nanjala Nyongesa, Benard Maonga Nyongesa, Tony Gerald Wawire Nyongesa, Renson Sakwa Nyongesa, Peter Maonga Nyongesa, Morton Wawire Nyongesa, Rodgers Toola Nyongesa, Aggrey Paul Simiyu Nyongesa, Barasa Wangia Nabiswa and Hassan Sifuna Wechuli Ogola. The consent on distribution was signed by all except Peter Maonga Nyongesa, Morton Wawire Nyongesa and Barasa Wangia Nabiswa. Except for Alice Nanjala Nyongesa, it does not bear the name of any other woman.

3. Three consents on distribution were filed on 16th November 2020. One set was filed by the administratrix, Alice Nanjala Nyongesa, all dated 2nd November 2020; and the other is by undisclosed individuals, and it is dated 16th November 2020. The documents filed by Alice Nyongesa, being a consent to confirmation of grant and consent to distribution are signed by Benard Maonga, Tony Gerald Wawire, Renson Sakwa, Rodgers Toola, Aggrey Paul Simiyu, Beatrice Nekesa, Melvin Sisa, Carolyne Khakasa and Hellen Makokha. It is not signed by Peter Maonga, Morton Wawire, Esther Khalisia, Mary J, Joyce Amati and Beatrice Nyongesa. The consent on distribution dated 2nd November 2020 proposes that Bunyala/Namirama/983 be shared out between Alice, Bernard, Tony and Renson with Alice and Benard getting 5 acres each while the rest get 4 acres each. It is proposed that Bunyala/Namirama/478 be shared out between Peter, Morton, Rodgers and Aggrey, so that Peter takes 5 acres and the rest 4 acres each. Esther, Mary, Joyce, Beatrice, Melvin, Carolyne and Hellen are not allocated any share in the 2 assets. The consent dated 16th November 2020 is signed by Peter, Denis s/o Morton, Esther, Mary and Joyce. It is proposed that Bunyala/Namirama/478 be shared equally between members of the 1st house, that is to say Peter, Denis, Esther, Mary and Joyce; and that Bunyala/Namirama/983 be shared equally amongst members of the 2nd house, that is to say Beatrice, Benard, Rodgers, Paul, Tony Renson, Carolyne, Melvin and Hellen. Peter swore an affidavit on 16th November 2020, which he filed in court on the same day, wherein he set out the survivors of the deceased according to the houses, and the proposals on distribution contained in the consent dated 16th November 2020.

4. From the consents filed and narrated above, the parties appear to be in agreement that Bunyala/Namirama/478 should devolve upon the 1st house, while Bunyala/Namirama/983 should devolve upon the 2nd house. The survivors in the 1st house would like the land shared equally amongst them, both male and female; while the survivors in the 2nd house prefer to have the land shared between the surviving widow and her sons, to the exclusion of the daughters. The daughters in both houses have executed the consents placed on record by the administrator from their respective houses. I shall proceed to distribute Bunyala/Namirama/478 and Bunyala/Namirama/983 as per the proposals from each house.

5. The final orders that I shall make in the end are:

- a. That I hereby confirm Alice Nanjala Nyongesa and Peter Maonga Nyongesa, as administrators of the estate of the deceased, for the purpose of completion of administration of the estate herein;**
- b. That Bunyala/Namirama/478 shall be shared equally between Peter Maonga Nyongesa, the estate of the late Morton Wawire Nyongesa, Esther Khalisiya Nyongesa, Mary J. Nyongesa and Joyce Amati Nyongesa;**
- c. That Bunyala/Namirama/983 shall be shared as follows: (i) to Alice Nanjala Nyongesa 5 acres, (ii) to Benard Maonga Nyongesa 5 acres, (iii) to Tony Gerald Wawire Nyongesa 4 acres, and (iv) to Renson Sakwa Nyongesa 4 acres;**
- d. That a certificate of confirmation of grant shall issue to the administrators in those terms; and**
- e. That any party aggrieved by the orders made above has leave of 28 days to appeal at the Court of Appeal.**

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 17TH DAY OF SEPTEMBER, 2021

W. MUSYOKA

JUDGE