



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT BUNGOMA**

**SUCCESSION CAUSE NO. 88 OF 2006**

**IN THE MATTER OF THE ESTATE OF WASIKE MURUNGA NAMUNABA-DECEASED**

**JULIUS LUBISIA WASIKE.....1<sup>ST</sup> PETITIONER**

**PERITA NASIMIYU WASIKE.....2<sup>ND</sup> PETITIONER**

**GRACE NALIAKA WASIKE.....3<sup>RD</sup> PETITIONER**

**VERSUS**

**JOHN WANJALA NAMUNABA.....1<sup>ST</sup> PROTESTOR**

**JOSEPH NABUKHWESI MUNYEFU.....2<sup>ND</sup> PROTESTOR**

**MOSES WAMALWA MUKHAMARI.....3<sup>RD</sup> PROTESTOR**

**J U D G E M E N T**

This is the prolonged litigation in relation to the estate of WASIKE NAMUNABA MURUNGA who died on 9.1.2007 at the age of 72 years. After a protracted hearing of the objections on 13.7.2017 M/s Omondi J. Issued grant of Letters of Administration Intestate to:

1. Julius Lubisa Wasike
2. Berita Nasimiyu Wasike
3. Grace Naliaka Wasike
4. John Wanjala Namunamba.

This order was made by consent of the parties and grant earlier issued on 27.5.2008 was revoked. Parties were directed to file application for confirmation within 45 days from 13.7.2017, when the order was made. The grant was signed by Aroni J on 3.10.2017.

Julius Lubisa Wasike on behalf of the Petitioners filled Affidavit in support of confirmation and in Para 5 of the affidavit proposed distribution as follows:

**1. LAND PARCEL NO. NDIVISI/MIHUU/2**

(a) GRACE NALIAKA WASIKE                      xxxxxx

1. RICHARD MAKHETI
2. CHARLES WEKESA
3. THOMAS NYONGESA

4. PATRICK NAMUNAVA

5. BEN LUSWETI

6. ISAAC WEKESA

7. ALICE NANJALA

8. ELIZABETH MATING'I

9. MARY NASIMIYU

10. RABECCA MUTONYE

11. CATHERINE KHALAKAYI

12. MIRIAM SIKHAYALWA

13. NELIMA WASIKE

2. PLOT NO. 6. LUGULU MARKET

(a) GRACE NALIAKA WASIKE                      xxxxxx

1. RICHARD MAKHETI

2. CHARLES WEKESA

3. THOMAS NYONGESA

4. PATRICK NAMUNAVA

5. BEN LUSWETI

6. ISAAC WEKESA

7. ALICE NANJALA

8. ELIZABETH MATING'I

9. MARY NASIMIYU

10. RABECCA MUTONYE

11. CATHERINE KHALAKAYI

12. MIRIAM SIKHAYALWA

13. NELIMA WASIKE

3. NDIVISI/MIHUU/20

(a) HENRY SIMIYU MUSIELE

4. LAND PARCEL NO. NDIVISI/NDIVISI/600

(a) PERITA NASIMIYU WASIKE                      xxxxxx

1. JULIUS LUBISIA

2. ELIUD WANGILA

5. PLOT NO. 5 LUGULU MARKET

(a) PERITA NASIMIYU WASIKE xxxxxx

1. JULIUS LUBISIA

2. ELIUD WANGILA

6. LAND PARCEL NO. NDIVISI/NDIVISI/1631

1. GRACE NALIKA WASIKE xxxxxx 2acres.

2. RICHARD MAKHETI

3. CHARLES WEKESA

4. THOMAS NYONGESA

5. PATRICK NAMUNAVA

6. BEN LUSWETI

7. ISAAC WEKESA

8. ALICE NANJALA

9. ELIZABETH MATING'I

10. MARY NASIMIYU

11. RABECCA MUTONYE

12. CATHERINE KHALAKAYI

13. MIRIAM SIKHAYALWA

14. NELIMA WASIKE

(b) HENRY SIMIYU MUSIELE xxxxxx 0.5 ACRES

(C) PERITA NASIMIYU WASIKE xxxxxx 2 acres

1. JULIUS LUBISIA

2. ELIUD WANGILA

(d) JOSEPH MAKETI MUSIELE xxxxxx 1.5 acres

(e) JAMIN SIMIYU WASIKE 1 acre to

(f) RENSON MAKHETI WASIKE xxxxxx equally

7. LAND PARCEL NO. NDIVISI/NDIVISI/1630

a) JOHN WANJALA NAMUNABA

b) JOTHAM WANYAMA NAMUNABA

c) NICHOLAS JUMA NAMUNABA

For the 3<sup>rd</sup> Petitioner on 11.10.2017 John Wanjala Namukaba filed an affidavit of protest to the confirmation and proposal for distribution. In paragraph 7 of his affidavit he depones:

**Para 7:** That therefore the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> petitioners are son and widows/wives of the deceased herein.

Para 10: That upon demise of the deceased herein he had the following properties among them registered in his names.

a) Land reference number Ndivisi/Mihuu/2

b) Land reference number Ndivisi/Mihuu/20

c) Land reference number Ndivisi/Ndivisi/600

d) Land reference number Ndivisi/Ndivisi/1631 and

e) Land reference number Ndivisi/Ndivisi/1630 created out of the old title comprised in land reference Ndivisi/ndivisi/602.

f) Plot number 5 on Lugulu Market

g) Ndivisi/Ndivisi/593

h) Bokoli/Kituni/352

Annexed and marked as JWN1 is form P&A 5 which was filed by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> petitioners.

**Para 11:** That my two brothers and I were to benefit from land parcel number Ndivisi/Ndivisi/602 which was fraudulently subdivided and registered in the names of the deceased herein by a fraudulent grant hat has now been revoked in land parcel number Ndivisi/ Ndivisi/1631 and 16 30.

Para12: That we do not have any interest in the other parcels as our interest only exists in land reference number Ndivisi/Ndivisi/602 vis avis 1630 and 1631.

**Para 13:** That since the deceased herein and his father's interest has been catered for in terms of five difference parcels comprised in title number Ndivisi/Ndivisi/600,Ndivisi/Ndivisi/593, Ndivisi/Mihuu/2, Ndivisi/Mihuu/20 and Bokoli/Kituni/352 given to him by our late father. His family is entitled to the said parcels and they may share the same in the manner they deem fit and just and consider the inters of all other liabilities if any.

**Para14:** That the suggestion or proposal by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> petitioners that we are only supposed to only share land parcel number Ndivisi/Ndivisi/1630 so that they remain with land parcel number Ndivisi/Ndivisi/1631 is acceptable.

**Para 15:** That there is no sufficient reason advanced in court as why the family of our brother and by extensions the decease person's family members who include the petitioners herein should get the lions share or a junk of our father's share at our detriment and disadvantage yet our father had even given him more than 7 acres we are to get.

**Para 16:** That it is therefore my humble proposal that this honourable court exercises it's discretion and nullify or cancel all title deeds illegally created by the deceased herein or the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Petitioner's comprised in title number Ndivisi/ndivisi/1630 and 1631 or any succeeding number so that they revert back to the old title comprised in Ndivisi/Ndivisi/602 or alternatively the said new numbers be registered in our names and share it to me and my brothers as follows:

(a) John Wanjala Namunaba - 7 acres

(b) Nicholas Juma Namunaba - 7 acres

(c) The estate of Jotham Wanyama Namunaba - 7 acres

TOTAL – 21 ACRES

He therefore proposed distribution as follows:

1. JOHN WANJALA NAMUNABA

(uncle to the deceased herein) to get 7 acres

ID NO. xxxxxx

2. NICHOLAS JUMA NAMUNABA

(uncle to the deceased herein) to get 7 acres.

ID NO. xxxxx

3. TEBLA KHALIMESI WANYAMA

(uncle to the deceased herein) to get 7 acres

To hold in trust of herself and the children of the late (JOTHAM WANYAMA NAMUNABA (DECAED) ID NO. xxxxxx

I have carefully considered the objection and the protested proposal on mode of distribution. I note from protester proposal he is only distributing parcel No. 1630 and 1631 and not the whole estate of deceased. He is also distribute among 3 beneficiaries only. I have considered the Petitioner's proposal which I find includes all the property of the deceased and all the beneficiaries.

On the second issue whether the 2<sup>nd</sup> protestor is entitled to Plot Number 5 Lugulu Market, having perused the application, the 2<sup>nd</sup> protestor's claim based on a hand written agreement dated 6<sup>th</sup> October, 1972. In the said agreement, the parcel number is not indicated. The seller therein is the deceased Wasike Murunga.

There is no documentation in the file on this parcel. That could explain the various descriptions of the parcel. The petitioners describe it as Plot number 6 Lugulu Market while the 2<sup>nd</sup> protestor refers to it as Plot Number 5.

In his evidence in court, the 2<sup>nd</sup> protestor stated that the persons who witnessed the execution of the agreement and when payment was being made were long dead.

In the absence of evidence to support this fact, the court is unable to find in his favour.

I therefore distribute the estate as follows:

1. LAND PARCEL NO. NDIVISI/MIHUU/2

(b) GRACE NALIKA WASIKE xxxxxx

1. RICHARD MAKHETI
2. CHARLRES WEKESA
3. THOMAS NYONGESA
4. PATRICK NAMUNAVA
5. BEN LUSWETI
6. ISAAC WEKESA
7. ALICE NANJALA
8. ELIZABETH MATING'I
9. MARY NASIMIYU
10. RABECCA MUTONYE
11. CATHERINE KHALAKAYI
12. MIRIAM SIKHAYALWA
13. NELIMA WASIKE

2.PLOT NO. 6. LUGULU MARKET

(b) GRACE NALIKA WASIKE xxxxxx

1. RICHARD MAKHETI
2. CHARLES WEKESA
3. THOMAS NYONGESA

4. PATRICK NAMUNAVA

5. BEN LUSWETI

6. ISAAC WEKESA

7. ALICE NANJALA

8. ELIZABETH MATING'I

9. MARY NASIMIYU

10. RABECCA MUTONYE

11. CATHERINE KHALAKAYI

12. MIRIAM SIKHAYALWA

13. NELIMA WASIKE

4. NDIVISI/MIHUU/20

(b) HENRY SIMIYU MUSIELE

5. LAND PARCEL NO. NDIVISI/NDIVISI/600

(b) PERITA NASIMIYU WASIKE xxxxxx

1. JULIUS LUBISIA

2. ELIUD WANGILA

6. PLOT NO. 5 LUGULU MARKET

(c) PERITA NASIMIYU WASIKE xxxxxx

1. JULIUS LUBISIA

2. ELIUD WANGILA

7. LAND PARCEL NO. NDIVISI/NDIVISI/1631

GRACE NALIAKA WASIKE xxxxxx 2acres.

1. RICHARD MAKHETI

2. CHARLES WEKESA

3. THOMAS NYONGESA

4. PATRICK NAMUNAVA

5. BEN LUSWETI

6. ISAAC WEKESA

7. ALICE NANJALA

8. ELIZABETH MATING'I

9. MARY NASIMIYU

10. RABECCA MUTONYE

