



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

P&A NO. 4 OF 2011

IN THE MATTER OF THE ESTATE OF THE LATE ZABLON MURAYA MANDILA.....DECEASED

AND

FRANCIS NASIUMA MURAYA.....1<sup>ST</sup> PETITIONER/DECEASED

REUBEN MANDILA MURAYA.....2<sup>ND</sup> PETITIONER/1<sup>ST</sup> RESPONDENT

DAMARIS MURAYA.....3<sup>RD</sup> PETITIONER

AND

DAVIES SIMIYU MURAYA.....1<sup>ST</sup> OBJECTOR/APPLICANT

JANE NASWA NASIUMA.....BENEFICIARY/2<sup>ND</sup> APPLICANT

ALICE NASIUMA MURAYA.....BENEFICIARY/2<sup>ND</sup> RESPONDENT

ALICE NASIUMA MURAYA.....BENEFICIARY/3<sup>RD</sup> RESPONDENT

SANGURA NASIUMA MURAYA.....BENEFICIARY/4<sup>TH</sup> RESPONDENT

DANIEL N. MURAYA.....BENEFICIARY/5<sup>TH</sup> RESPONDENT

### J U D G M E N T

Zablon Muraya Mandila died on 9.11.2005. He was married to one wife with whom they had 7 children.

Francis Nasiuma Muraya – son

Fridah Nang'oni Muraya – daughter

Damaris Matingi Muraya- daughter

Reuben Mandila Muraya – son

Davies Simiyu Muraya – son

Elijah Sungura Muraya – son

Daniel Nabie Muraya – son

The deceased children the Petitioner 1 Francis Nasiuma Muraya, 2 Reuben Mandila Muraya and 3 Damaris Muraya filed this succession cause. Davis Simiyu Muraya filed a cross petition for the grant under Rule 12(5) of the law of Succession Act seeking orders stating he is the rightful administrator of the estate having been so appointed in a meeting held on 19.5.2007.

On 13.10.2020 the beneficiary agreed and by consent the court appointed

1. Jane Naswa Muraya
2. Damaris Muraya
3. Davis Simiyu Muraya as administrators of the estate.

On 2.2.2011 the counsel for the parties M/s Chunge for 1. Davis Simiyu, 2. Jane Naswa 3 Damaris Muraya and Mr. Ateya for 1. Elijah Muraya 2. Alice Muraya 3. Sangura Muraya and 4 Daniel Muraya, informed court that the parties have failed to agree on a common mode of distribution. The court gave the following directions:

1. That the petitioners do apply for summons for confirmation together with the mode of distribution signed by the beneficiaries who consent to their mode of distribution.
2. Mr. Ateya's clients 1. Elijah Muraya 2. Alice Muraya 3. Sangara Muraya 4. Davis Muraya to also file their mode of distribution signed by the beneficiaries who consent to their mode of distribution.

Both parties filed their respective proposed mode of distribution. The deceased only asset was parcel property parcel No. South Malakisi/South Namwela/ 240 measuring approximately 9.6 Hectares (28 acres). M/s Change clients the protestors filed their proposed mode of distribution as follows:

- 1. Jane Naswa Nasiuma and Alice Nasiuma Muraya being daughter in- laws to the deceased herein and the widows of the late Francis Nasiuma Muraya deceased to get 2 acres each of the total 4 acres due to the estate of their late husband.**
- 2. Reuben Mandila Muraya to get 4 acres.**
- 3. Davies Simiyu Muraya to get 4 acres.**
- 4. Jeremiah Khaoya Muraya son of the late Fridah Nang'oni Sangura Muraya deceased to get 4 acres to hold in trust of himself and the children of his said mother.**
- 5. Elijah Wochuna Muraya to get 4 acres.**
- 6. Daniel N. Muraya to get 4 acres**
- 7. Damary Nanjala Muraya to get 4 acres.**

That proposal is signed and supported by:

1. Jane Naswa Waswa
2. Damaris Nanjala Muraya
3. Davis Simiyu Muraya.
4. Jeremia Khaoya Muraya.

In support of this proposal Davis testified that Francis and Frida died. Jane Naswa is the widow of Francis who had 2 other wives Alice and Majuma. He stated that Frida died but she left a son Jeremiah Muraya who has been provided for. He confirmed that Frida was married to Jefra Munialo who is the father of Jeremia and other children. He confirmed in cross-examination that Frida died and was buried where Jeremeh is staying.

Damaris Nanjala Muraya testified that she was a daughter of the deceased and was married in 1985 to Morris Wekesa with whom she had 2 children but left the matrimonial home in 1986

Jane Naswa Nasiuma testified that she was married to Francis Muraya who died in 2019. Francis had 2 other wives Alice Madenyo and Margaret Nisiuma. He testified that it is her and Alice who have been provided for in parcel NO. S. Malakisi/S. Namwela/240 as the other co-wife Margaret Nashuma was already settled by Francis in another parcel of land before he died.

Mr. Ateyas clients 1. Elijah 3. Sangura Muraya 4. Daniel Muraya 5. Reuben Muraya filed their consent on proposed mode of distribution as hereunder:

a) FRANCIS NASIUMA MURAYA

(Son now deceased) 4 children

-ALICE NASIUMA MURAYA 9w9fe of Frnaics 082732 1.2 Hac

-SORIK M. SANGURA (son of Frnaics Nasiuma) 28341889

- JANE NASWA (wife to Francis was settled

at Gimukung'a and has no child. Has no share to)

b) REUBEN MANDILA MUYA 0829537 2 Hac

c) DAVIES SIMIYU MURAYA 2 Hac

d) ELIJAH WACHUNA MURAYA (he participated Fully in paying the debt of land that had been Purchased by the deceased and the deceased promised to add Him 2 acres of land 9458310 2.4Hac

e) DANIEL NABIE to get 10858981 2Hac

In support of his proposed distribution Elijah Muraya testified that the deceased had 5 sons and 2 daughters. He confirmed on cross-examination that his sister Frida was married and died and her children are with their father. He confirmed that Francis Muraya the brother died and had 3 wives Alice Jane and Margaret. He testified that he had allocated more land to himself as the deceased had directed so because he had paid a debt as directed by his father. His proposal is supported by:

1. Alice Nasioma Muraya – wife of Francis and Jane Waswa.
2. Reuben Mandila Muraya
3. Elijah Muraya
4. Daniel Nabie.

M/s Chunga for Davis and his team submits that all the children of the deceased must be provided for including Frida who was married and died and buried in her matrimonial home and Damaris who is married but left the matrimonial home leaving her children with the father.

I have considered submissions and the evidence adduced. I am stratified that Jeremiah Khaoya is a son of Frida who was married to his father Jafrels Mumalo who is still alive. He therefore is not a beneficiary of the estate as he has a father who is alive and has a home and probable property for him to inherit from. I do not find that there is any justification for him to be provided for.

Damaris Nanjala readily admits that though she is a daughter of the deceased, she was married to Morris Wekesa with whom they have 2 children. Though she says she is not married and that she left the matrimonial home, I find no evidence adduced that she divorced or separated or that she should be provided for. I find that she is married to Morris Wekesa and has a matrimonial home where the children are staying.

In the result I find that and distribute the estate equally among the dependents son as follows:

1. The estate of Francis Nasiuma Muraya 1.92 HA
2. Reuben Mandila Muraya 1.92 HA
3. Davis Simiyu Muraya 1.92 HA
4. Elijah Wochuna Muraya 1.92 HA

Total 9.6 HA

**DATED AT BUNGOMA THIS 16TH OF NOVEMBER, 2021.**

**S.N RIECHI**

**JUDGE**