



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUNGOMA.**

**SUCCESSION CAUSE NO. 195 OF 2014.**

**RODGERS MATIFARI.....ADMINISTRATOR/APPLICANT**

**VERSUS**

**PETER WANGILA MATIFARI.....ADMINISTRATOR/RESPONDENT**

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

The deceased Luka Matifari Wobata died on 31.5.2012. He had 10 wives and 39 children. He also had 11 Parcels of land and left an estate valued at Kshs.1,000,000/=. Peter Wangila Matifari 1<sup>st</sup> Petitioner a son of Deceased applied for Letters of Administration. Rodgers Matifari Obata another son of the deceased objected to the grant being issued to 1<sup>st</sup> Petitioner. By order dated 7.6.2016 Aroni J issued grant of Letters of Administration Intestate to Peter Wangila Matifari and Rodgers Matifari Obata jointly.

The 2 Petitioners were to apply for confirmation of the grant. However they were unable to agree on common mode of distribution. By consent the 2 Petitioners each filed the preferred mode of distribution and gave evidence in support of their respective mode of distribution.

From the evidence the deceased at time of death had 10 wives;

- (1) Rosina Naliaka Matifari
- (2) Mary Namaemba (deceased)
- (3) Fridah Namarome
- (4) Repa Nafuna (deceased)
- (5) Grace Nafula
- (6) Jane Nangekhe
- (7) Margaret Nabalayo
- (8) Marisiano Nabangala
- (9) Priscilla Namalwa
- (10) Everlyne Naliaka

The deceased had 10 widows, Children (19) Sons and (17) Daughters;

**(1). WIDOW 1: ROSINA NALIKA MATIFARI:**

**DAUGHTERS:**

1. Priscila Munika Matifari
2. Felister Nasimiyu Matifari

3. Beatrice Masi Pwondi Matifari

**SONS:**

1. George Tindi Matifari

2. Patrick Wekesa Matifari

3. Charles Wakhungu Matifari

4. John Wamalwa Matifari

5. Mourice Wanjala Matifari

6. Christopher Waswa Matifari (deceased)

**(2) WIDOW 2: MARY NAMAEMBA MATIFARI (Deceased)**

**DAUGHTERS:**

1. Fridah Nafula Matifari

2. Perita Nafunal Matifari

**SONS:**

1. Sylvester Juma Matifari

2. Zacharia Simiyu Matifari

**(3) WIDOW 3: FRIDA NAMAROME MATIFARI**

**DAUGHTERS:**

1. Concepita Nakhumicha Matifari

2. Brigit Nasambu Matifari

**SONS:**

1. Peter Wangila Matifari

2. Eliud Wabomba Matifari

3. Martin Shikuku Matifari

**(4) WIDOW 4: REPA MAFUNA MATIFARI (Deceased)**

**DEPENDANTS:**

1. Meshack Wangila

2. Robert Wafula

**(5) WIDOW 5: GRACE NAFULA MATIFARI**

**DAUGHTERS:**

1. Violet Nasimiyu Matifari

2. Everlyne Namutosi Matifari

**SON:**

1. Chrispinus Nyongesa Matifari

**(6) WIDOW 6: JANE NANGEKHE MATIFARI**

**SON:**

1. Josephat Sifunal Matifari

**DEFENDANT:**

1. Isaya Matifari

**(7) WIDOW 7: MARGARET NABALAYO MATIFARI**

**DAUGHTERS:**

1. Josphine Wamalwa Matifari

2. Gladys Nafuna Matifari

3. Judith Kesia Matifari

**(8) WIDOW 8: MARISIANO NABANGALA MATIFARI**

**DAUGHTER:**

1. Centrine Ndelema Matifari

**(9) WIDOW 9: PRISILA NAMALWA MATIFARI**

**DAUGHTER:**

1. Merceline Nafula Matifari

**(10) WIDOW 10: EVERLYNE NALIKA MATIFARI**

**DAUGHTERS:**

1. LNM (Minor)

2. CNM (Minor)

3. RM (Minor)

**SONS:**

1. IWM (Minor)

2. MWM (Minor)

3. FWM (Minor)

**DEPENDANT:**

1. Godfrey Mukhwana Juma

The deceased at time of death had the following properties/parcels of land;

**PARCEL NO. MEASUREMENT**

E. BUKUSU/N. KANDUYI/4648 0.026HA

W. BUKUSU/N. MATEKA/1381 2.9HA  
W. BUKUSU/N. MATEKA/1384 1.9HA  
W. BUKUSU/N. MATEKA/1687 2.3HA  
W. BUKUSU/N. MATEKA/1770 1.33HA  
W. BUKUSU/N. MATEKA/xxxx 31.20HA  
W. BUKUSU/N. MATEKA/2420 2.50HA  
W. BUKUSU/N. MATEKA/2421 2.70HA  
W. BUKUSU/N. MATEKA/2422 1.46HA  
W. BUKUSU/N. MATEKA/2423 4.50HA  
W. BUKUSU/N. MATEKA/2425 1.25HA  
W. BUKUSU/N. MATEKA/2428 2.00HA  
W. BUKUSU/N. MATEKA/2429 1.30HA  
W. BUKUSU/N. MATEKA/2430 3.00HA  
W. BUKUSU/N. MATEKA/2431 3.45HA

The deceased had also a property in Uganda Parcel No. **MARAKARU BUDARIRI BLOCK/ROAD 4 PLOT No. 131** Measuring 62 Acres. He also had a plot **W. BUKUSU/N. KANDUYI/4648** on which there was development.

By direction of this court the 2 petitioners gave evidence in support of their mode of distribution.

Grace Nafula Matifari the Widow testified in support of 2<sup>nd</sup> Petitioner Rodgers Matifari proposed mode. She testified that the deceased had 10 wives;

- (1) Rosina Naliaka Matifari
- (2) Mary Namaemba (deceased)
- (3) Fridah Namarome
- (4) Repa Nafuna (deceased)
- (5) Grace Nafula
- (6) Jane Nangekhe
- (7) Margaret Nabalayo
- (8) Marisiano Nabangala
- (9) Priscilla Namalwa
- (10) Everlyne Naliaka

She testified that after the death of deceased a Meeting was held on 12.6.2012 chaired by Jim Busolo as the Chairman where the distribution as the proposal was agreed in the “lufu” Meeting. She supports the distribution as made during the “lufu” Meeting. On being cross examined by Musumba for 1<sup>st</sup> Petitioner she admitted attending the Meeting held on 24.9.2016 where she was given 4 acres and she signed the Minutes. In respect to Uganda property she testified that Uganda Land had not been distributed.

Isaya Kutoyi was the Secretary of the Meeting held on 24.9.2016 in which distribution of estate was done as per the proposal by Rodgers Matifari the 2<sup>nd</sup> Administrator. He however did not attach the list of the beneficiaries who attended the meeting. Simon Simiyu a son of deceased also attended the Meeting and confirmed this distribution. Upon cross examination he admitted that the deceased had prior to his death gave him 2.9 acres from Bukusu/N. Mateka/2425 part of which he has sold.

Rodgers Matifari 1<sup>st</sup> petitioner testified that deceased had 10 wives - 8 are alive and 2 are deceased. Prior to his death the deceased had appointed Patrick Wekesa Matifari as Chairman of his Committee running his affairs including a bank account. He proposed that court adopted his mode of distribution. He proposed that the Plot E. Bukusu/N. Kanduyi/4648 which is developed be given to the widows. He also urges the Uganda property be included in the estate and distributed. He confirmed that W. Bukusu/N. Mateka/2127 Measuring 1.3HA was transferred to his name. He also confirmed W. Bukusu/N. Mateka/1770 is occupied by Martin Sikuku - his Step brother, and Margaret his (Rodgers) real mother.

1<sup>st</sup> Petitioner witness Peter Wangila Matifari the 2<sup>nd</sup> Petitioner filed an affidavit of protest sworn on 2.2.2018. He testified that a meeting held on 24.9.2016 the estate was distributed according to the proposal in paragraph 12 of his affidavit. He testified that the widows were each given 4 acres to share with their daughters. Plot No. E. Bukusu/N. Kanduyi/4648 Measuring 25ft by 100ft which is developed be left for the widows and the income from the property be used to support the widows.

He in respect to Uganda land he stated that it is not available for distribution as it is registered in name Patrick Wekesa. According to him he proposed his mode as hereunder: -

S/NO.	NAMES	ACRES	PARCEL NO.	ID. NO.
1.	GEORGE TINDI	10	2421 & 2422	[...]
2.	SYLVESTER JUMA	11	2423	[...]
3.	CHARLES WAKHUNGU	7.5	2430	[...]
4.	JOHN WAMALWA	3.5	2429	[...]
5.	CHRISTOPHER WASWA	6	2428	
6.	ZACHARIA SIMIYU	8.4	2431	
7.	CHRISPINUS NYONGESA	6.12	2420	
8.	JOSEPHAT SIFUNA	4.8	1384	[...]
9.	MARTIN SIKUKU	3	1381	[...]
10.	RODGERS WABOMBA	3.4	1770	
11.	SIMEON SIMIYU	2.9	2425	
12.	IW	12	xxxx	MINOR
13.	FW	12	xxxx	MINOR
14.	MW	12	xxxx	MINOR
15.	GM	1	xxxx	MINOR

**The Minor Parcels of Land will be held in trust by the Mother, Everlyne Naliaka and the Administrator Peter W. Matifari until they attain the age of 18 years.**

All the daughters will share land with their mothers.

S/NO.	NAMES	ACRES	PARCEL NO.	ID. NO.
1.	<b>Rosina Naliaka</b>	4 Acres	2419	[...]
	(a) Prisila Munika			[...]

	(b) Felister Namiyu (c) Beatrice Nasipwondi			[...] [...]
2.	<b>Mary Namaemba - Deceased</b> (a) Frida Nafula (b) Peritaa Nafuna	4 Acres	2419	Deceased [...]
3.	<b>Frida Namarome</b> (a) Consepta Nakhumicha (b) Bridgit Nasambu	4 Acres	2419	[...] [...]
4.	<b>Repa Nafuna - Deceased</b> (a) Meshack Wangila Wanami (b) Robert Wafula (Trust will be in the hands of the Administrator ( <b>Peter W. Matifari</b> ))	4 Acres	2419	[...] [...]
5.	<b>Grace Nafula</b> (a) Violet Nasimiyu (b) Everlyne Namutosi	4 Acres	2419	[...]
6.	<b>Jane Nangekhe</b> (a) Isaya Matifari	3 Acres	1687	[...]
7.	<b>Margaret Nabalayo</b> (a) Josphine Namalwa (b) Gladys Nafuna (c) Judith Kesia	4 Acres	1381	
8.	<b>Marisiano Nabangala</b> (a) Centrine Nderema	4 Acres	2419	
9.	<b>Prisila Namalwa</b> (a) MN	4 Acres	2419	Minor
10.	<b>Everlyne Naliaka</b> (a) LN (b) CN (c) RM	4 Acres	2419	[...] Minor Minor Minor

Eliud Wabomba Matifari a son of the deceased testified that he attended the Meeting of 24.9.2016 chaired by Patrick Wangamati where the property were shared. Rodgers Matifari the 2nd Petitioner did not attend

the Meeting. Patrick Wekesa Matifari a Son of the deceased confirmed in the meeting of 24.9.2016 chaired by Patrick Wangamati, attended by Paulo Wanyama, Joseph Makokha, Martin Sikuku who are Members of Bamuyonga clan. He testified that before his death the deceased had given to him the land in Uganda which is now registered in his name and is therefore not part of the estate; for distribution. He also testified that Rodgers had been given 5 Acres of land bought for Richard Ngome.

From the evidence tendered by the 1<sup>st</sup> and 2<sup>nd</sup> Petitioner and the witnesses, it is apparent that the deceased had during his life time given on the ground certain property to the dependants. The parcel No. E. Bukusu/North Mateka/2419 measuring 79.3 Acres had not been settled. The other property not allocated were E. Bukusu/N. Kanduyi/4648 measuring 25ft by 100ft which is developed with premises from which there rental income, Mateka/Budadiri Block/Road 4 Plot No. 131. There is an issue whether this farm in Uganda was part of the estate and available for distribution. Patrick Wekesa testified that the deceased had given him this land before he died. He readily admits the land belonged to the deceased. He then stated he was given the land by deceased but in his statement he said he bought it but produced no evidence of purchase. None of his witnesses testified to how the deceased gave Patrick the land and most were unaware of any such transfer. I am satisfied that any registration at this parcel of land in name of Patrick was fraudulent. I therefore find that the Marakaru/ Budadiri Block/Road 4 Plot No. 131 in Uganda is part of the estate and available for distribution.

I find that there was a meeting held on 24.9.2016 where the distribution of the estate was considered. Considering all the evidence and submission, I hereby distribute the estate as hereunder;

SM/NO	NAMES	ACRES	PARCEL NO.
1.	GEORGE TINDI	10	2421 & 2422
2.	SYLVESTER JUMA	11	2423
3.	CHARLES WAKHUNGU	7.5	2430
4.	JOHN WAMALWA	3.5	2429
5.	CHRISTOPHER WASWA (a) ROSE MACHUMA (b) ROSELINE NALIKA	6	2428
6.	ZACHARIA SIMIYU	8.4	2431
7.	CHRISPINUS NYONGESA	6.12	2420
8.	JOSEPHAT SIFUNA	4.8	1384
9.	MARTIN SIKUKU	3	1381
10.	RODGERS WABOMBA	3.4	1770
11.	SIMEON SIMUYU	2.9	2425
12.	ISAAC WANYONYI	12	2419
13.	FRED WANJALA	12	2419
14.	MANUEL WEKESA	12	2419
15.	GODFREY MUKHWANA	1	2419

**NOTE:** All the daughter will share land with their mothers.

**WIDOWS:**

S/NO.	NAMES	ACRES	PARCEL NO.	ID. NO.
1.	ROSINA NALIAKA (a) PRISILA MUNIKA (b) FELISTER NASIMIYU (c) BEATRICE NASIPWONDI	4 Acres	2419	[....] [....] [....] [....]
2.	MARY NAMAEMBA (Deceased) (a) FRIDA NAFULA (b) PERITA NAFUNA	4 Acres	2419	Deceased ([....])  No Kenyan ID
3.	FRIDA NAMAROME (a) CONCEPT NAKHUMICHA (b) BRIDGIT NASAMBU	4 Acres	2419	[....] [....] [....]
4.	REPA NAFUNA (Deceased) (a) MESHACK W. WANAMI (b) ROBERT WAFULA	4 Acres	2419	Deceased [....] [....]
5.	GRACE NAFULA (a) VIOLET NASIMIYU (b) EVERLYNE NAMUTOSI	4 Acres	2419	[....] [....]
6.	JANE NANGEKHE (a) ISAYA MATIFALI	3 Acres	1687	[....] [....]
7.	MAGARET NABALAYO (a) JOSEPH NAMALWA (b) GLADYS NAFUNA (c) JUDITH KESIA	4 Acres	1381	
8.	MARISIANO NABANGALA (a) CENTRINE NDEREMA	4 Acres	2419	[....]Not acquired ID
9.	PRISILA NAMALWA (a) MERCELINE NAFULA	4 Acres	2419	[....]
10.	EVERLYNE NALIAKA (a) LN	4 Acres	2419	[....] MINOR

	(b) CN			MINOR
	(c) RM			MINOR

BENEFICIARIES	LAND PARCEL NO.	SHARE (ACRES)
ROSINA NALIAKA MATIFARI		
JANE NANGEKHE MATIFARI		6
FRIDA NAMAROME MATIFARI		6
ZACHARIA SIMIYU MATIFARI		6
(On Behalf of MARY NAMAEMBA (Deceased)		6
GRACE NAFULA MATIFARI		
MARGARET NABALAYO MATIFARI		6
MARISIANO NABANGALA MATIFARI		6
	UGANDA	
PRISCILLA NAMALWA MATIFARI	N LAND BUDADIRI BLOCK 4 PLOT NO. 131 IN TRUST OF PATRICK WEKESA MATIFARI	6
		6
EVERLINE NALIAKA MATIFARI		4
ROBERT WAFULA MAKOKHA		4
On behalf of REPA NAFUNA (Deceased)		6
RODGERS MATIFARI OBATA		
PETER WANGILA MATIFARI (ADMINISTRATIVE COSTS)		

The plot parcel No. E. Bukusu/N. Kanduyi/4648 to be jointly registered in the names of 10 widows of the deceased who will agree on the mode of administering the property and income.

**Dated, Signed and Delivered at Bungoma this 5<sup>th</sup> day of June, 2020**

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**S.N. RIECHI**

**JUDGE**