



IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE & ADMINISTRATION NO. 121 OF 2013

IN THE ESTATE OF:

SILVANUS MAKOKHA NYABOLA.....DECEASED

BETWEEN

MOLYNE ADONDI MAKOKHA.....PETITIONER/RESPONDENT

AND

SOPHIA MUNDE MAKOKHA

JANE ATIENO MAKOKHA.....OBJECTORS/APPLICANTS

RULING

1. **Sophia Munde Makokha** and **Jane Atieno Makokha**, the objectors herein filed an objection to the confirmation of grant herein as proposed by the petitioner/respondent.

2. The proposal by the petitioner was as follows:

- a) Molyne Adondi Makokha 3 Ha.
- b) Sophia Munde Makokha 3¹/₂ Ha.
- c) Jane Atieno Makokha 3¹/₂ Ha.

These portions were to be excised from land parcel number BUKHAYO/MATAYOS/58.

3. The objectors contended that the proposal was wrong for the deceased was survived by two widows (the objectors) and ten children who include the petitioner. The deceased's land measures 4.0 hectares and the proposal of the petitioner is therefore erroneous for it is in excess of what is available for distribution.

4. Upon my perusal of the record, the certificate of the official search in respect of land parcel number **BUKHAYO/MATAYOS/58** that was filed by the petitioner indicate that the land is approximately 4.0 hectares. Her proposal on the distribution to the three heirs in her list therefore exceeds what is available for distribution.

5. The petitioner's proposal does not provide for the other nine beneficiaries and who have not renounced their right to inherit.

6. The objector's proposal that land parcel number **BUKHAYO/MATAYOS/58** be shared equally by the ten children of the deceased while the two widows inherit Plot No. 2 at Lunga market is reasonable. I approve the proposal. This resonates well with the provisions of section 40 (1) of the Law of Succession Act which provides:

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.

7. The grant is therefore confirmed in the terms approved hereinabove. The parties are given a period of six months to render accounts in compliance with section 83(g) of the Law of Succession Act. Failure to do so, without satisfactory reasons, the grant shall be revoked.

8. Each party to meet own costs.

DELIVERED and SIGNED at BUSIA this 21st day of May, 2019

KIARIE WAWERU KIARIE

JUDGE