



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO 19 OF 2008**

**IN THE MATTER OF THE ESTATE OF ELIUD WANYAMA SARATUKI...(DECEASED)**

**AND**

**CHRISTINE SIKHOYA WANYAMA**

**JOHN MUCHASI WANYAMA**

**GEORGE NANDOKHA WANYAMA**

**CAROLINE KITUYI WANYAMA.....(ADMINISTRATORS)**

**JUDGEMENT**

The late **Eliud Wanyama Saratuki** died on the 3/7/2007. Thereafter Yokabet Khamala Wanyama and John Songolo K.Wanyama (herein ,the Petitioners) petitioned for grant of letters of administration in respect to the estate of the deceased. The petition was for their benefit and other beneficiaries.

On the 20<sup>th</sup> May 2008 Florence Khwaka Wanyama filed a caveat in respect to the estate of the deceased and subsequently on the 27<sup>th</sup> May 2008 she filed an affidavit of protest against confirmation of grant stating that she is one of the widows of the deceased and he died living behind 4 widows namely: -

- i) Yakobet Khamala Wanyama -1<sup>st</sup> Widow
- ii) Robai Lusanya Wanyama-2<sup>nd</sup> Widow
- iii) Jane Nanyama Wanyama-3<sup>rd</sup> Widow
- iv) Florence Khwaka Wanyama-4<sup>th</sup> Widow

That the deceased was also survived by the following children from the 4 widows: -

1) **Yakobet Khamala Wanyama** the 1<sup>st</sup> Widow children comprised: -

- i. Annah Naliaka Wanyama-daughter
- ii. John Songolo K.Wanyama-son
- iii. Christine Sikhoya Wanyama-daughter
- iv. Augustine Muchaji Wanyama-son
- v. Phaustine Wanyama-daughter
- vi. Miriam Nasila Wanyama-daughter
- vii. Beatrice Walela Wanyama-daughter

- viii. Emmanuel Wasike Wanyama-son
- ix. Godfrey Ngeywo Wanyama-son
- x. Collins Nandokha Wanyama-son
- xi. Esther Nasong'o Wanyama-daughter
- xii. Gladys Mapesi Wanyama-daughter

**2) Robai Lusanya Wanyama the 2<sup>nd</sup> widow children comprised: -**

- i. John Muchesi Wanyama-son
- ii. Catherine D.Wanyama -daughter
- iii. Edith Wamini Wanyama-daughter
- iv. Winrose Nasila Wanyama-daughter
- v. Peninah Nasong'o Wanyama-daughter
- vi. Getrude Kituyi Wanyama-daughter
- vii. Edwin Wamboka Wanyama-son
- viii. Elizabeth Sikhoya Wanyama-daughter
- ix. Sarah Nabalayo Wanyama-daughter
- x. Samuel Nandokha Wanyama-son

**3) Jane Nanyama Wanyama the 3<sup>rd</sup> Widow children comprised: -**

- i. Mark Maina Wanyama-son
- ii. Rose Kituyi Wanyama-daughter
- iii. Dorcus Sikhoya Wanyama-daughter
- iv. Samson Nabiswa Wanyama-son
- v. Rebecca Sikhoya Wanyama-son
- vi. George Nandokha Wanyama-son
- vii. Benard Mukhwana Wanyama-son
- viii. Evans Khisa Wanyama-son

**4) Florence Khwaka Wanyama the 4<sup>th</sup> Widow children comprised: -**

- i. Robert Wamboka Wanyama-son
- ii. Carolyne Kituyi Wanyama-daughter
- iii. Jeniffer Mutonyi Khwaka-daughter
- iv. Joseck Wanyama Khwaka-son
- v. Bathlyne Namwei Wanyama -daughter
- vi. Christine Nason'go Wanyama-daughter

- vii. Emmanuel Saratuki Wanyama-son
- viii. Ronald Mufumbula Wanyama-son
- ix. James Nandokha Wanyama-son
- x. Francis Wasike Wanyama-son
- xi. Joan Nabifo Wanyama-daughter
- xii. Esther Sikhola Wanyama-daughter

The estate of the deceased listed in the petition included portions of land described as Land Parcel No.N.Malakisi/N.Wamono/620-acres and Land Parcel No.N.Malakisi/N.Wamono/632-12 1/2 acres, Plots Nos. Bungoma 377,MayekweNo.8,Chebukube Market No.7.

On the 5<sup>th</sup> November 2018 the court directed petitioners to file their proposal on mode of distribution of the estate and in compliance with court directions the John Muchasi and Caroline Kituyi Wanyama filed their proposal under form 37 and dated 20<sup>th</sup> November 2018 for their benefit and of other beneficiaries that included distribution of deceased assets among the widows and their children. Also, Christine Sikhonya and George Nandokha Wanyama gave their proposed-on mode of distribution dated 13<sup>th</sup> November 2018.

On the 8.2.2019 the court directed that the petition and the protest be heard by viva-voce evidence and in that regard the parties testified as follows: -

**Yakobet Khamala Wanyama** the 1<sup>st</sup> widow testified she was married to deceased in 1953 as 1<sup>st</sup> wife and he had 4 wives and all of them had children and she wanted the assets to be divided equally among the widows who will then distribute the same to their children.

**Robai Lusanya Wanyama** the 2<sup>nd</sup> widow testified that she is a widow to the deceased and got married in 1965 and she is in 2<sup>nd</sup> house. She stated that she wanted the estate to be divided among the 4 widows and they will then distribute among their children.

**Jane Nanyama Wanyama** the 3<sup>rd</sup> widow testified that she is she got married to deceased in 1963 as 3<sup>rd</sup> wife and she stated that she wanted the estate to be divided among the 4 widows and they will then distribute among their children.

**Florence Khwaka Wanyama** the 4<sup>th</sup> widow testified that she is the 4<sup>th</sup> widow of the deceased and got married in 1974 and she stated that she wanted the estate to be divided among the 4 widows and they will then distribute among their children.

**Christine Sikhonya Wanyama** who is a co-administrator testified that the deceased is her father and she stated that she has given mode of distribution together with George Nandokha Wanyama and she wanted each house to be given equal share and widows to distribute among the children.

**George Nandokha Wanyama** who is a co-administrator testified that deceased was his father and he is from 3<sup>rd</sup> house and he stated that deceased left the following a number of assets behind he stated that he wanted the estate to be divided among the 4 widows and they will then distribute among their children.

**John Muchasi Wanyama** who is a co-administrator testified that the deceased was his father and he stated that he wanted the estate to be divided among the 4 widows and they will then distribute among their children.

**Carolyne Kituyi Wanyama** who is a co-administrator testified that deceased was her father and he left behind assets stated that she wanted the estate to be divided among the 4 widows and they will then distribute among their children per the mode of distribution filed by her and John Muchesi.

To determine the mode of distribution of the deceased estate I wish to draw the attention of the petitioners to the fact that the deceased was polygamous and court should be guided by section 40 of the law of succession in the distribution of the properties in question.

Section 40 of law of succession provides: -

***Where intestate was polygamous***

***(1) 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.***

***(2) The distribution of the personal and household effects and the residue of the net intestate estate within each house shall then be in accordance with the rules set out in sections 35 to 38.***

From the evidence it clear that the deceased was polygamous and he was survived by 4 widows each with children and the following

properties: -

**1) Land Parcel No.North Malakisi/North Womono/632 measuring 12 ½ acres.**

**2) Land Parcel No.North Malakisi/North Womono/620 measuring 33 acres and Petitioners have indicated 2 acres of this parcel of land was sold out to Chrisptopher Kasuti by the deceased thereof remaning portion is 31 Acres.**

**3) Plot No.377 Bungoma Town**

**4) Plot No.7 Chepkube Market**

**5) Plot No.8 Mayekwe Market**

**6) Rental Collections approximately Kshs.1,200,000/= in account number 5322314001 of Diamond Trust Bank.**

I have therefore considered the law applicable in this matter and the two proposals on mode of distribution of the estate that have been placed before me. I have taken into account the pleadings and submissions before me by all the widows and some beneficiaries that the estate be divided equally among the 4 widows to hold it in trust for themselves and for the benefit of their children. For equity to be achieved it is my finding that the mode of distribution does commend itself to the circumstance of this cause. The grant is confirmed as per the summons for confirmation of grant in the following terms: -

1. All the estate will be distributed among the 4 widows equally for their own benefit and hold the same in trust of their respective children in the following mode of distribution: -

**i. Land Parcel No. North Malakisi/North Womono/632 measuring 12 ½ acres.**

This parcel of land will be distributed among the 4 widows equally as follows: -

No.	Widow No.	Name of Beneficiaries	Assets/Shares
1	1 <sup>st</sup> Widow	Yakobet Khamala Wanyama	3 1/8 Acres
2	2 <sup>nd</sup> Widow	Robai Lusanya Wanyama	3 1/8 Acres
	3 <sup>rd</sup> Widow	Jane Nanyama Wanyama	3 1/8 Acres
	4 <sup>th</sup> Widow	Florence Khwaka Wanyama.	3 1/8 Acres

**ii. Land Parcel No.North Malakisi/North Womono/620 measuring 35 acres.**

iii.

No.	Widow No.	Name of Beneficiaries	Assets/Shares
1	1 <sup>st</sup> Widow	Yakobet Khamala Wanyama	8 ¼ Acres
2	2 <sup>nd</sup> Widow	Robai Lusanya Wanyama	8 ¼ Acres

3	3 <sup>rd</sup> Widow	Jane Nanyama Wanyama	8 ¼ Acres
4	4 <sup>th</sup> Widow	Florence Khwaka Wanyama.	8 ¼ Acres

Liability

5.Christopher Kasuti(buyer) to be given 2 acres from Land Parcel No.North Malakisi/North Womono/620 measuring 35 acres.

2. Plot No.377 Bungoma Town will be distributed equally among: -

- i. Yakobet Khamala Wanyama -1<sup>st</sup> Widow
- ii. Robai Lusanya Wanyama-2<sup>nd</sup> Widow
- iii. Jane Nanyama Wanyama-3<sup>rd</sup> Widow
- iv. Florence Khwaka Wanyama-4<sup>th</sup> Widow

3. Plot no.7 Chepkube Market will be distributed equally among: -

- i. Yakobet Khamala Wanyama -1<sup>st</sup> Widow
- ii. Robai Lusanya Wanyama-2<sup>nd</sup> Widow
- iii. Jane Nanyama Wanyama-3<sup>rd</sup> Widow
- iv. Florence Khwaka Wanyama-4<sup>th</sup> Widow

4. Plot No.8 Mayekwe Market will be distributed equally among: -

- i. Yakobet Khamala Wanyama -1<sup>st</sup> Widow
- ii. Robai Lusanya Wanyama-2<sup>nd</sup> Widow
- iii. Jane Nanyama Wanyama-3<sup>rd</sup> Widow
- iv. Florence Khwaka Wanyama-4<sup>th</sup> Widow

5. Rental Collections approximately Kshs.1,200,000/= in account number 5322314001 of Diamond Trust Bank. This amount will be shared equally among the 4 widows as set out below: -

- i. Yakobet Khamala Wanyama the 1<sup>st</sup> Widow will receive **Kshs.300,000/=** and to hold the amount in for herself and in trust of her children.
- ii. Robai Lusanya Wanyama the 2<sup>nd</sup> Widow will receive **Kshs.300,000/=** and to hold the amount for herself and in trust of her children.
- iii. Jane Nanyama Wanyama the 3<sup>rd</sup> Widow will receive **Kshs.300,000/=** and to hold the amount for herself and in trust of her children.
- iv. Florence Khwaka Wanyama the 4<sup>th</sup> Widow will receive **Kshs.300,000/=** and to hold the amount for herself and in trust of her children.

6. No orders as to costs.

Dated and **Delivered** at **Bungoma** this 15<sup>th</sup> day of May, 2019.

**S.N. RIECHI**

**JUDGE**