



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NUMBER 217 OF 2014

IN THE MATTER OF THE ESTATE OF THE LATE HEZRON WAMALWA SUMBULE - (DECEASED)

JOHN WARECHEBAYWA SUMBULE.....1ST PETITIONER

JAMES MAKOKHA SUMBULE.....2ND PETITIONER

BETTY NANJALA SUMBULE.....3RD PETITIONER

MOSES WAMALWA.....4TH PETITIONER

JUDGEMENT

1. By their application dated 5th June, 2018 the Applicant/Administrator applied to have the grant issued to them jointly to be confirmed. He swore a supporting affidavit dated the same date and he has indicated the names of the beneficiaries as well as the assets left behind by the deceased who died intestate.

2. His mode of distribution has been objected to by some of the beneficiaries. These include James Makokha Sumbule who has gone ahead to provide his mode of distributing the estate.

3. Generally from the history of this cause there has been bad blood between the beneficiaries who come from three houses. The deceased left behind two properties namely, **KWANZA/KWANZA BLOCK3/LUHYA/3** measuring 21.36 Ha, and **KABRAS/KIVAYWA/159** measuring 4.8 Ha.

4. He left behind the following dependants;

1. PRISCILLA NATO WAMALWA

2. JERIDA MULONGO WAMALWA

3. BETTY NANJALA WAMALWA

4. JOHN WAMALWA SUMBULE

5 JACK WAMALWA

6 AGNESS LUSIKE

7. WYCLIFFE WAMALWA

8.BEATRICE MAKONJO

9.MARGARET KHAKASA

10. WILLIAM WAMALWA

11. STEPHEN JUMA WAMALWA

12. VIOLET WAMALWA
13. NAOMI NANYAMA WAMALWA
14. MESHACK WAMALWA SUMBULE
15. SAUL WEKESA
16. SAMUEL WAMALWA SUMBULE
17. JAMES MAKOKHA WAMALWA
18. AMOS SAMBULE
19. MOSES WAMALWA
20. ROBAI WAMALWA
21. NORAH MASITSA WAMALWA
22. WILSON SIMIYU WAMALWA
23. SAMSON WAMALWA
24. NAFULA WAMALWA
25. DAVID LUVISIA WAMALWA
26. BERNARD WAMALWA
27. CAROLYNE NEKESA WAMALWA
28. EVERLYNE NANJEKHO WAMALWA
29. NALIAKA WAMALWA
30. NAKHUMICHA WAMALWA
31. JOYCE KHAYANGA WAMALWA
32. JUDITH WAMALWA
33. ELIUD JUMA SUMBULE
34. JULIET MAYUVA WAMALWA.

5. The applicant as earlier stated above provided his proposed mode of distribution which appears not acceptable to some of the parties especially the girls.

6. It is abundantly clear that the family is a large one, the deceased having married three wives. The option this court has is to comply with the provisions of **Section 40(1) of the Succession Act** which provides guidance in such estates.

7. The said Section provides that;

“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.”

8. From the P&A forms filed herein unless the contrary is shown, it is obvious that the second house of **Jerida Mulongo Wamalwa** has only 6 children whereas the first and the third houses of **Priscilla Wamalwa** and **Betty Wamalwa** have slightly more.

9. In light of the failure by the parties to agree on the mode of distribution and the fact that none has shown any special reason why he should be given more or less than the other, then this court is left with no other option but to rely on the provisions of the Act quoted above.

10. The court has been shown the list of purchasers of the Kabras land and it appears that there were no issues to the same. Whether it was sold by the deceased or the beneficiaries are not disputed and for that reason the same should be transmitted to each one of them as indicated.

CONCLUSION

11. In light of the above statement and backed by the law, and so as to remove any discrimination or biasness based on gender or any other customary perspective the estate should be shared out to the units or houses. Each house should thereafter craft a formula which they should use to share or distribute their portion. The law does not stop them from 'trading in' or surrendering to each other as the case may be.

12. Therefore **Land Parcel No. KWANZA/KWANZA BLOCK 3/LUHYA/3** be shared out as follows;

- a. The house of **PRISCILLA NATO WAMALWA** ... 18 Acres
- b. The house of **JERIDAH MULONGO WAMALWA**14 Acres
- c. The house of **BETTY NANJALA WAMALWA** ..18 Acres

13. Land Parcel No. KABRAS /KIVAYWA/159

- a. Barasa Sumbule.....6.5 Acres
- b. Sussy Iswana Nyongesa1.3 Acres
- c. Mellap Muzachi Barasa.....0.4 Acres
- d. Joseph Wumba Tatayo.....0.12 Acres
- e. Benjamin Chebai Shalo.....1.5 Acres
- f. Jacob Kerah Kara.....0.75 Acres
- g. Church of Truth.....0.1 Acres
- h. Teryphere Amimo Lutunya.....1.5 Acres

14. This being a family matter each party shall be responsible for their costs.

Dated, signed and delivered in open court at Kitale this 15th day of May, 2019.

H.K.CHEMITEI

JUDGE

15/5/19

In the presence of:-

Munialo for 3rd and 4th Petitioners

John Sumbule - Present

James Sumbule – Present

Court Assistant – Kirong

Judgment read in open court.