



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

SUCCESSION CAUSE NO. 295 OF 2017

IN THE MATTER OF THE ESTATE

OF THE LATE LUMBASI MUTALI.....DECEASED

VERSUS

JARVIS KAIKAI SAMBU.....PETITIONER

RULING

Lumbasi Mutali died in or about 1974 on 26.6.2014 the Petition Jairus Kakai Sambu filed this Petition stating that the deceased left the following dependants.

1. Tom Sirengo Lumbasi - Aged 83
2. Joseph Mulati Lumbasi - 83 Years
3. George Wekhwela Lumbasi - 79 Years

The grant was issued to him dated 24th February 2015. On 13th March 2015 he applied for confirmation of the grant before the expiry of the statutory 6 months because the dependants were old and sickly. Aroni J

Granted the necessary leave to him to do so. On 31.10.2017 the Petitioner filed an affidavit where in paragraph 7 enumerated the beneficiary and shares as follows;

NAME.	PROPERTY	SHARES
1. TOM SIRENGO LUMBASI	NDIVISI/MIHUU/830	2½ Acres
2. JOSEPH MULATI LUMBASI	NDIVISI/MIHUU/830	2 Acres
3. GEORGE WEKHWELA LUMBASI	NDIVISI/MIHUU/830	8½ Acres
4. JOSEPH OPICHO	NDIVISI/MIHUU/830	1 Acre

George Wekhwela Lumbasi objected to the mode of distribution and the shares in this proposed mode of distribution. The Court directed the objection be heard by way of viva voce evidence. George Wekhela Lumbasi the objector testified that the deceased was his father. He had 2 wives (a) Elizabeth who sired 3 boys and 5 daughters. (b) Mary Nandolo who had 3 sons and one (1) daughter. He testified that he was the son of the second house and his mother was Mary. In their house were 3 sons, the objector, Joseph Mulati and his brother called Opicho who died in 2014 and that before he died he Joseph instructed him to take care of his son as Opicho's wife had left him and had been married elsewhere. The first house of Elizabeth had several children who are all deceased except for Tom Sirengo. He testified that the deceased had 3 parcels of land in different locations. Tom Sirengo is occupying No. 831, Joseph Mulati has No. 832 and the only one remaining is 830 which is the subject of this Petition. He prays that the son of Opicho called Joshua Lumbasi to be included. The objector called a witness Alison Walubengo Chikamba who testified that indeed Joshua Lumbasi is a son of a daughter of Namalwa who was a daughter of Opicho Lumbasi. Joshua was therefore not a son of Opicho but a grandson by his daughter. He confirmed that Joshua was born out of wedlock.

The Petitioner testified that he was only placed to be the administrator. He filed the petition, was issued with grant and applied for

confirmation giving the mode of distribution proposed by the family members as per paragraph 7 of the affidavit. He testified that Opicho was not considered for a share because he died without a child; and nobody told them about a grandchild.

From the evidence of the witnesses, it is clear that the deceased had 3 houses and 3 parcels of land. The parcels of land are now held as follows; Sirengo No. 831, Joseph Mulati No. 832. The objection states 830 which is the subject at this Succession should be given to him and the grandchild of his late brother Opicho.

The Petitioner appear to have acknowledged this fact before the distribution mode adopted in paragraph 7 of the supporting affidavit where they have allocated the objector 8½ acres and the others 2 and 2½ acres respectively. That Tom Sirengo Lumbasi is occupying Land Parcel No. 821 and Joseph Mulati Land Parcel No. 832 which all used to belong to their deceased father is not disputed or challenged. This court therefore finds that they were provided for. That being so, then the parcel No. 830 should be allocated to the objector George Wekwela Lumbasi and for his late brother's grandson Joseph Opicho. I uphold the objection and direct that the Land Ndivisi/Mihuu/830 measuring 5.8 Ha. (Approximating 14 Acres be distributed as follows;

1. *George Wekwela Lumbasi (Son)* - 10 Acres
2. *Joseph Opicho [Grandson of Opicho –(late)]* - 4 Acres

No order as to costs.

Dated, Signed at Bungoma this 12th day of June, 2019.

S.N. RIECHI

JUDGE