



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 252 OF 2015**

**IN THE MATTER OF THE ESTATE OF THE**

**LATE BARNABAS SIMIYU MUNIALO - (DECEASED)**

**ANTONY BULITIA SIMIYU.....1ST PETITIONER**

**AMOS WANJALA SIMIYU.....2ND PETITIONER**

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

1. **Antony Bulita Simiyu, Amos Wanjala Simiyu, and Sarah Nekesa Simiyu** are the Administrators of the deceased estate herein. They have filed an application for the confirmation of the grant issued to them jointly on the 15<sup>th</sup> June, 2016. On distribution they have not agreed on the mode and this necessitated Antony Simiyu to file his own mode. Essentially each beneficiary had its own perspective on the way in which the estate should be distributed.

2. The deceased had three houses and left behind the beneficiaries as hereunder:

**(I). House of Margaret Simiyu:**

- a. Maeve Khalagai
- b. Dorothy Nabalyo Simiyu
- c. Andrew Murefu Simiyu (Deceased)
- d. Josephine Nanjala Simiyu
- e. Peter Lusweti Simiyu
- f. Irene Fyfield
- g. Tom Wafula Simiyu
- h. Moses Simiyu
- i. Abraham Shikuku Simiyu
- j. Joel Nekesa Simiyu
- k. Amos Wanjala Simiyu

**(II) House of Matilda Mwangale Simiyu**

- a. Victoria N. Simiyu
- b. Annemarie Musawale Simiyu
- c. Trizah Nafula Simiyu

d.Elizabeth Ayoti Simiyu

e. Stella Makona Simiyu

f. Antony Bultia Simiyu

**(III) House of mama Christine**

a. Kenneth simiyu

**(IV) Jacqueline Joy Namada**

3. The deceased left behind the following assets, namely,

**a. NZOIA SCHEME PLOT NO. 178 MEASURING 32**

**ACRES**

**b. BITUTI FARM PARCEL NO. 5569/2 MEASURING**

**82 ACRES.**

**c. PLOT AT ANGLE FARM MEASURING 6 ACRES**

**d. BIRUNDA MARKET PLOT MEASURING 1/8**

**e. BIKEKE FARM MEASURING 2.5 ACRES**

**f. MABONDE FARM**

**g. ACCOUNTS AT KENYA COMMERCIAL BANK AND BARCLAYS BANK with a unascertained amount of money.**

4. The court has read the two competing affidavits on distribution and what is clear is that they all recognise each other in terms of being the legitimate beneficiaries. There are two sons who have since passed on but it is generally accepted that their portions shall be taken by their respective beneficiaries although they did not supply their details.

5. It is apparent that the deceased seemed to have settled his family in their respective portions prior to his demise and this court would not want to disturb much the status quo. There were averments that the house of Matilda would want to remain within the portion where their mother is interred and her house not disturbed. This should be allowed to the extent that when the same is divided they should remain within the designated area.

6. The court has perused both competing modes of distribution and save for some minor differences, they all agree that the distribution shall be equal regardless of gender. This is the spirit envisaged in Article 27 of the Constitution and Section 40 of the Succession Act.

7. From the submission by Arunga Advocate, viz a viz that of m/s Kidiavai the essential difference is that the house of Matilda have desired to hold their portion as a block although the size would not differ very much. This position should be respected as long as the rest are not disadvantaged.

8. The first house on the other hand would wish to settle at **Nzoia Scheme** and it appears that that was the arrangement done by the deceased while he was alive. Again the same should be respected as long as it does not disadvantage the rest.

9. Looking generally on the proposals by **Antony Simiyu** and compared to that of **Amos Wanjala Simiyu**, the former in my view appear more comprehensive and covers the many other properties left behind in the latter's affidavit. The point of convergence however is on the fact that they all generally agree on the acreage.

10. This court shall not restrict the beneficiaries to further make local and individual arrangements as to how they wish to have the same shared out or amalgamated if need be afterwards. The only rider is that the survey work should be as proximate as possible to where they have settled and developed and should ensure that the capital development should not be disturbed.

11. The affidavit of Amos proposes that cultural sites be set aside. This seemed not to have been agreed by all sides. The best approach would be for them to set aside after the distribution by this court if they so desire.

12. There was no evidence presented to this court to show that there were proceeds from the leasing of the land, sugarcane proceeds, sale of farm implements and tools and creditors to the estate. Neither was there evidence of the suits against the estate provided. This court would not want to venture into the above areas and it behoves the administrators to find a formula to settle the same and they shall be at liberty to apply.

13. There was also an argument whether the right acreage was provided. This court shall apply the acreages provided in the affidavit of Anthony Simiyu to the extent that should the surveyors prove that the acreages are less or none, the same shall still be divided on that basis of the available acres.

14. Having stated as much, it is the considered position of this court that the estate be distributed as hereunder:

**(I) NZOIA SCHEME measuring 32 acres**

- a. Amos Wanjala Simiyu .....7 acres
- b. Joel Wekesa Simiyu.....7 acres
- c. Moses Simiyu.....7 acres
- d . Tom Wafula Simiyu.....7 acres
- e. Abraham Shikuku Simiyu .....4 acres

**(II) BITUTI FARM MEASURING 82 ACRES.**

- a. Abraham Shikuku Simiyu.....3 acres
- b. Estate of the late Peter Lusweti Simiyu...7 acres
- c. Dorothy Nabalayo Simiyu .....7 acres
- d. Meave Khalaghai .....7 acres
- f. Estate of the late Andrew Murefu Simiyu  
(deceased) .....7 acres

g. 50 Acres to the household of the late Matilda Mwangale Simiyu ,comprising, Victoria Namtosi Simiyu, Annemarie Musawale Simiyu, Trizah Nafula Simiyu, Elizabeth Namtosi Simiyu , Stella Makona Simiyu and Antony Bulitia Simiyu.

**(III) BIKEKE FARM**

- a. Josephine Nanjala Simiyu ....0.5 acres with  
a developed house
- b. Ken Simiyu .....2 .5 acres

**(IV) BIRUNDA MARKET COMMERCIAL**

**PROPERTY MEASURING 1/8 to Joy**

Namanda Simiyu

**(V) MABONDE FARM**

- a. Josephine Nanjala Simiyu.....3 acres
- b. Joy Namanda Simiyu .....3 acres

**(VI) All the amount of money available at KENYA**

**COMMERCIAL BANK and BARCLAYS BANK OF KENYA to be shared out equally among all the beneficiaries after paying out any liability due to the estate (if any ).**

15. This being a family dispute each one shall meet their respective costs.

**Date signed and delivered in open court at Kitale this 23<sup>rd</sup> day of July 2019.**

.....

**H K CHEMITEI**

**JUDGE**

**23/7/19**

**In the presence of:-**

**Khisa for the Respondent**

**Teti holding brief for Arung for Petitioner**

**Court Assistant – Kirong**

**Judgment read in open court**