



**REPUBLIC OF KENYA**

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

**P&A CAUSE NO. 383 OF 2006**

**VIOLET KHASOHA MUSIDIA.....1<sup>ST</sup> APPLICANT**

**SILIYA KHASIALA.....2<sup>ND</sup> APPLICANT**

**-VERSUS-**

**MARY NYOKABI.....1<sup>ST</sup> RESPONDENT**

**HELLEN MUSIMBI MUSILA.....2<sup>ND</sup> RESPONDENT**

**RULING**

**[1]** This Ruling is in respect of the Chamber Summons application dated **6 June 2013**. The application was filed pursuant to **Section 71 of the Law of Succession Act, Chapter 160** of the **Laws of Kenya** and all enabling provisions of the law for orders that:

**[a]** Spent

**[b]** The Estate of the Deceased herein be distributed among the Petitioners and Objectors as proposed in the Supporting Affidavit;

**[c]** That the costs of the application be provided for;

**[d]** That the Court be pleased to make any other relief it deems fit and expedient to grant in the circumstances.

**[2]** The application was premised on the grounds that it is over six months since the Grant of Letters of Administration Intestate was advertised, and that the Petitioner and the Objectors have not agreed on how to distribute the Estate. The application was supported by the affidavit sworn by the two applicants, **Violet Khasoha Musidia** and **Siliya Khasiala**. In addition thereto, the 1<sup>st</sup> Applicant adduced *viva voce* evidence on **28 May 2018** pursuant to the directions of the Court made on **17 March 2014** in that regard. She produced a set of documents marked **the Applicant's Exhibit No. 1** in support of the application.

**[3]** The contention of the Applicants is that they are the Petitioners herein, and that they were issued with a Grant of Letters of Administration Intestate to the Estate of the Deceased, **Nicholas Kiptum** on **3 May 2001**. They proposed that the assets comprising the Estate of the Deceased be distributed as follows:

**[a]** That Parcel No. Soy/Soy Block 10 (Navillus) 950 comprising of 0.036 ha be given to Violet Khasoha Musidia;

**[b]** That Parcel No. Soy/Soy Block 10 (Navillus) 971 comprising of 0.036 ha be given to Violet Khasoha Musidia;

**[c]** That Parcel No. Soy/Soy Block 10 (Navillus) 962 comprising of 0.036 ha be given to Brian Amusivwa Musidia;

**[d]** That Parcel No. Soy/Soy Block 10 (Navillus) 983 comprising of 0.036 ha be given to Cynthia Musimbi Musidia;

**[e]** That Parcel No. Soy/Soy Block 10 (Navillus) 989 comprising of 0.088 ha be given to Jaeli Khasiala Musidia;

**[f]** That Parcel No. Soy/Soy Block 10 (Navillus) 990 comprising of 0.036 ha be given to Edel Lihanda Musidia;

**[g]** That Parcel No. Serikoit/Kakamega/826 comprising of 0.088 ha be given to Siliya Khasiala.

**[h]** That Parcel No. Soy/Soy Block 10 (Navillus) 1387 comprising of 2.5 acres be split into 1/8 acre pieces and be given to Juliet

Shirwazo Musidia, Brian Amusivwa Musidia and Basilisa Nyangori; and that the remaining portions be sold to cover the surveyor's costs and the cost of preparing titles for the plots.

[i] That Parcel No. Soy/Soy Block 5416 comprising of 1.5 acres be split into 1/2 acres each and be given to Siliya Khasiala, Brian Amusivwa Musidia and Edel Lihanda Musidia.

[j] That the remaining 2 acres of Parcel No. Soy/Soy Block 10 (Navillus) 1387 comprising of 2.5 acres be split into 1/2 acres and be given to Violet Khasoha Musidia, Cynthia Musimbi Musidia, Jaeli Khasiala Musidia and Juliet Shirwazo Musidia.

[k] That Parcel No. Ngoisa LR No. 8384/10 comprising of 5 acres and the remaining 1.5 acres be sold to cover costs of preparing titles among Violet Khasoha Musidia, Cynthia Musimbi Musidia, Jaeli Khasiala Musidia, Edel Lihanda Musidia, Edel Lihanda Musidia, Siliya Khasiala, Juliet Shirwazo Musidia and Brian Amusivwa Musidia.

[l] That the sawing (sewing) machine be given to Violet Khasoha Musidia.

[4] In addition to the foregoing, it was the testimony of the 1<sup>st</sup> Applicant that the Respondents to the instant application, namely, **Mary Nyokabi** and **Hellen Musimbi**, who were widows of the deceased, have been found, by an Order of the Court dated **17 October 2002** to have intermeddled with the Estate and sold some of the property. She added that one of them, **Hellen Musimbi** has since re-married; and on the basis thereof, she urged the Court to find that the two are therefore not entitled to a share of the Deceased's Estate. It was further the testimony of the 1<sup>st</sup> Applicant that all the dependants of the Deceased, including the children of the two Respondents, have been taken into account and given a share of the Estate in the proposed distribution scheme. She therefore prayed that the Grant be confirmed and the assets comprising the Estate of the Deceased herein be distributed as proposed in the Supporting Affidavit.

[5] A careful perusal of the court record reveals that this is a longstanding matter, having been commenced in the year **2006**; and that an objection that had been raised by the two Respondents was determined by the Court way back on **29 April 2013**. The Court was satisfied that the two Respondents, though they had separated from the deceased during the latter part of his lifetime, were dependants for purposes of **Section 29** of the **Law of Successions Act**. There appears to be no provision for them in the proposed distribution scheme, yet the Court was explicit thus in the Ruling aforementioned:

**"It is also not in dispute that the 2<sup>nd</sup> Objector resides and continues to reside on the property where the deceased's remains were interred. From the evidence adduced, it is evident that the Petitioners knew that the deceased had these two wives but deliberately excluded them from the list of beneficiaries of the estate of the deceased. The evidence of PW2 and DW5 confirms that the deceased was polygamous and the evidence of DW5 supports the fact that the deceased made reasonable provision for the petitioners, the objectors and the other beneficiaries vide the oral will...This court concurs with the submissions of the objectors that the Estate of the deceased is depleted, save for only one property, namely five acres at Ngoisa. This court orders the petitioners to commence proceedings for confirmation of the Grant with regard to this sole property..."**

[6] There is no indication that the said decision was appealed by the Applicants or reversed by the Court of Appeal. Accordingly, it would be out of tune for the Applicants to propose that **Parcel No. Ngoisa LR No. 8384/10** comprising of 5 acres be sold to cover costs of preparing titles among Violet Khasoha Musidia, Cynthia Musimbi Musidia, Jaeli Khasiala Musidia, Edel Lihanda Musidia, Edel Lihanda Musidia, Siliya Khasiala, Juliet Shirwazo Musidia and Brian Amusivwa Musidia, without expressly taking into account and providing for the acknowledged interests of the Respondents.

[7] Accordingly, and pursuant to **Section 71(2)(d)** of the **Law of Succession Act**, the orders that commend themselves to me in the circumstances, is an order for the postponement of the confirmation of grant pending reconsideration and proposal by the Applicants with the consent of all beneficiaries as to the interests of the two Respondents. Accordingly, I would direct as follows:

[a] That the confirmation of grant herein be postponed pending reconsideration and fresh distribution proposal as aforementioned;

[b] That a status update of the Ngoisa Property, namely, **Parcel No. Ngoisa LR No. 8384/10** comprising of 5 acres be provided on **9 July 2018**, and that the Respondents be notified accordingly.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 7<sup>TH</sup> DAY OF JUNE, 2018**

**OLGA SEWE**

**JUDGE**