



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
SUCCESSION CAUSE NO. 429 OF 2001

IN THE MATTER OF THE ESTATE OF DANIEL SHIUNDU IMBUSI
ESTHER KHASOA SHIUNDU..... PETITIONER

V E R S U S

JOHN MANYASA SHIUNDU OBJECTOR

J U D G M E N T

The late **DANIEL SHIUNDU IMBUSI** died on the 6.9.1983. The dispute involves the distribution of his estate which comprise of plot number **KAKAMEGA/LUKUME/759** measuring **9.6 hectares**. The deceased had four (4) wives and the petitioner **ESTHERY KHASOA SHIUNDU** applied for letters of administration intestate. The petitioner is one of the deceased's wives. The objector **JOHN MANYASA SHIUNDU** objected to the petition and the matter proceeded to full hearing. The objector is the deceased's son from another wife.

The objector **JOHN MANYASA SHIUNDU** testified that the deceased was his father. His father had four wives. Two wives are alive namely the petitioner and **WAYETA SHIUNDU**. Two other wives **ANGELINA** and **TRUDEYA** are deceased. The deceased left five sons and daughters. His proposed mode of distribution is as follows:-

GEORGE SHIUNDU4ACRES
MAURICE SHIUNDU.....3 ½ ACRES
SIMON MAINA.....3 ½ ACRES
PAUL SHIUDU.....3 ½ ACRES
HIMSELF.....1 ½ ACRES
CONSOLATA & PRISCA.....1 ACRE

The objector further testified that he was given his own land by his father but in 1979 his father sold 2 acres of the suit land for KShs.3,700/=. He refunded the buyer his money and redeemed the property. He produced an agreement to that effect. Having saved the land he proposes that he be given 1 ½ acres and will give ½ acre to his sisters **JEPHTHA** and **PRISCILA**. The petitioner sold the portion meant for Simon Maina. Simon Maina Shiundu is deceased but he left behind three children. He contends that Prisca and Consolata are the only children of one of the wives and they are entitled to inherit. There is no son in their house. His blood brother is George Shiundu and he wants him to get 4 acres because his father said

so. Maurice is also his blood brother. Peter and James are from the petitioner's house which also includes the late Simon Maina Shiundu. Paul Shiundu is from a different mother. The other girls sold their land and do not deserve any share.

The petitioner Esthery Khasoa Shiundu testified that the deceased was her husband. The objector is the son of her co-wife who was the first wife. The first wife had three sons and one daughter. They are all alive. She had two sons and one daughter and they are all alive. Her husband left a big plot and she would like it to be given to the six children. The objector was given his own land and should not benefit from the suit land. She would like to be given the land so that she can distribute to the children.

DW2 PETER SHIUNDU INGUSI is the deceased's son. He testified that his father had seven sons and nine daughters. He left plot number **KAKAMEGA/LUKUME/759**. The land should be distributed amongst the six children namely – Keya Shiundu, Badi Shiundu, Peter Shiundu, Maina Shiundu, Paul Shiundu and James Lukavale Shiundu. Each should get four (4) acres. It is his evidence that one Andrew Kaisha bought 2 ½ acres and one Murunda bought 2 acres. The objector was given plot number 889 measuring 6 acres and lives on his land.

The only issue for determination is how the deceased's estate should be distributed. It is clear that the deceased had four wives and he had children from all the wives. From the evidence of the objector it is established that one of the wives had daughters namely Consolata and Prisca. I do find that the two should also benefit from the estate. I have seen the proposed mode of distribution by all the parties and the main difference is that whereas the objector proposes to give the sons other than George 3 ½ acres each, the petitioner and DW2 are proposing 4 acres each. The land is 9.6 hectares which is about 23.7 acres. It is also established that the objector was given his own land. Although it could be true that he redeemed 2 acres out of the suit land I do find that that cannot be the main reason for him to benefit from the suit land. His plot measures 6 acres which is bigger than the proposed portions for his brothers. It is established that other than the 2 daughters from one of the houses, the other daughters are not claiming any part of the estate.

I will proceed and distribute the estate as follows:-

- a. **CONSOLATA AND PRISCA.....3 ACRES**
- b. **GEORGE KEYA SHIUNDU.....**
- c. **MAURICE MBATI SHIUNDU.....**
- d. **PETER IMBUSI SHIUNDU.....TO SHARE THE**
- e. **SIMON MAINA SHIUNDU.....REMAINDER**
- f. **PAUL IMBUSI SHIUNDU.....EQUALLY**
- g. **JAMES LUVALE SHIUNDU**

Whoever sold to MURUNDA and ANDREW KAISHA shall have his share reduced to the extent of the sold portion. The share of Simon Maina Shiundu shall be held by the petitioner in trust for his one daughter and two sons. The petitioner shall have life interest on the shares of her two sons. A certificate of confirmed grant shall be issued to the petitioner and Peter Shiundu Imbusi jointly who shall distribute the estate as herein above. Each party shall meet his/her own costs.

Delivered, dated and signed at Kakamega this 15th day of October 2014

SAID J. CHITEMBWE

JUDGE