



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**PROBATE & ADMINISTRATION 183 OF 2007**  
**IN THE MATTER OF THE ESTATE OF JONATHAN KIBWAA ITIU**  
**(DECEASED)**  
**WILSON KIBWAA ITIU.....PETITIONER/RESPONDENT**

**RULING ON DISTRIBUTION**

1. Jonathan Kibwaa Itiu died on 1.7.1993 and Wilson Kioko Kibwaa petitioned for grant of letters of administration to the estate on 20.4.2007. On 21.4.2008 beneficiaries consented that the said letters of administration be issued to Wilson Kioko Kibwaa aforesaid, Jones Mutuku Kibwasa, Fredrick Mweu Kibwaa and Molline Katunge Kibwaa. It was further agreed that they would file Affidavits on distribution in the event of disagreement on the issue.
2. The administrators agreed on the following assets as available for distribution.
  - i. Kangundo/Kikambuani/675
  - ii. Kangundo/Kikambuani/659
  - iii. Kangundo/Kikambuani/555
  - iv. Plot No. 7 Kikambuani Market with shops A,B,C
  - v. Plot In Drumville (Kamulu)
  - vi. Land in Drumville (Kamulu)
  - vii. Wendano Matuu Estate
  - viii. Kyanzavi F.C. Ltd
  - ix. Kyeni Kya Kangundo
  - x. Kikambuani Investment
  - xi. Machakos Union Ltd (Msafiri) Athi River

3. The beneficiaries are named as;

- i. Naomi Nzilani Kibwaa- wife**
- ii. Mercington Kiio Kibaaa -62 years**
- iii. Joseph Muthini Kibwaa – 60 years – son (deceased)**
- iv. Fredrick Mweu Kibwaa – 56 years –son**
- v. Wilson Kioko Kibwaa – 54 years – son**
- vi. Felix Muli Kibwaa – 52 years – son**
- vii. Jones Mutuku Kibwaa Kibwaa- 50 years - son**
- viii. Daniel Mutuku Kibwaa – 47 years – son**
- ix. Thomas Kieti Kibwaa – 43 years – son”**

4. Before me are the following proposals; the first by Wilson Kioko Kibwaa which is contained in his Affidavit sworn on 5.8.2008 and it is that;

§ **“That land parcel no. 659 measuring 1.6 hectares should be divided into 3 people (sic) namely; Joseph Muthini Kibwaa, (his 2 wives) Wilson Kioko Kibwaa and Felix Muli Kibwaa.**

§ **That land parcel no. 675 measuring 2.8. hectares should be divided into three people (sic) namely; Jones Mutuku Kibwaa, Daniel Masaku Kibwaa and Thomas Kieti Kibwaa.**

§ **That land parcel no. 555 measuring 1.2. hectares should be divided between Fredrick Mweu Kibwaa and Mercington Kiio Kibwaa.**

§ **That Plot registration Kangundo Town Council Kikambuani Market No. 7 which is divided into 3, shops A. B. and C shop No. C be given to Wilson Kioko Kibwaa and the rest of the shops be divided equally among the other 8 sons.**

§ **That the shares be divided as follows;**

- Drumville (Kamulu) plot – Felix Muli**
- Drumville (Kamulu) land – Joseph Muthini**
- Wendano Matuu Estate – Jones Mutuku**
- Kyanzavi F.C. Ltd – Wilson Kioko**
- Kyeni Kya Kangundo – Mercington Kioo**
- Kikambuani Investment – Daniel Masaku**
- Machakos Union Ltd (Msafiri Athi River) Fredrick Mweu.”**

5. The other by Jones Mutuku Kibwaa is contained in his Affidavit sworn on 12.11.2008 and it is that;

**“...the following assets which form part of the estate have been in undisturbed occupation and use of**

*the beneficiaries named against the respective parcels-*

§ *Kangundo/Kikambuani/555–Tilus Kii and Fredrick Mweu.*

§ *Kangundo/Kikambuani/659-JosephMuthini, Wilson Kioko, Felix Muli and Tilus Kii (coffee only)*

§ *Kangundo/Kikambuani/675 - Jones Mutuku, Daniel Masaku and Thomas Kieti.*

§ *That it will be fair and just that the distribution be confirmed as proposed herein above as any disturbance would cause inconvenience and injustice.*

§ *That another asset of the estate is Plot No. 7 Kikambuani market which consists of 3 divisions.*

§ *The division on the right side should be given to Thomas Kieti, Fredrick Mweu and Daniel Masaku*

§ *That the Division at the centre should be given to Joseph Muthini and Jones Mutuku, this division being only partly developed.*

§ *That the division of the left side should be given to Wilson Kioko, Tilus Kii and Felix Muli.*

§ *That the proposed division of the market plot is pegged on the wishes of the majority of beneficiaries and the compatibility of the respective individuals.*

§ *That there are also ICDC shares which were given to Thomas Kieti by the deceased during his lifetime and should be awarded to the said Thomas Kieti exclusively.*

§ *That there are other assets given to respective beneficiaries by the deceased who are not the subject of the proposed distribution and in respect of which there is no dispute.”*

6. In a further affidavit sworn on 24.3.2009 Wilson Kioko Kibwaa proposes as follows;

§ *That affidavits on distribution of the estate were filed on 5.8.2008 and 12.11.2008 and both affidavits are in agreement in most of issues and on 9.2.2009 consent was recorded that the only outstanding issue is in respect of Plot No. 7 Kikambuani Market.*

§ *That besides the above issue, land parcel no. Kangundo/Kikambuani/659 should be shared among Joseph Muthini, Wilson Kioko and Felix Muli. The objector is giving Tilus Kii (coffee only), which is not the position as who will be the owner of the soil where the coffee grows?*

§ *That I wish to clarify that all the beneficiaries will share equally the lands allocated to them, respectively.*

§ *That Plot no. 7 Kikambuani market consists of 3 divisions; A,B & C*

§ *That in the year 1982, I solely, with the blessings of the deceased constructed the buildings standing on the left side (c), a fact well within the knowledge of all beneficiaries. Thus the left side should be given to me alone.*

§ *That I have been paying the government rent and rates in respect of the shop and houses on the left (c) wing and I have been in its occupation since 1982.*

§ *That division A & B should be sold and all proceeds shared out equally amongst all the beneficiaries since it is impossible each to get a shop there.”*

7. Jones Kibwaa responded in an Affidavit sworn on 17.2.2009 and stated thus;

§ *That on 9.2.2009 we agreed in this honourable court on the distribution of all the free assets of the estate of the deceased except the division of Plot No. 7 Kikambuani market.*

§ *That the said plot no. 7 Kikambuani market consists of 3 divisions.*

§ *That the division on the right side should be given to Thomas Kieti, Fredrick Mweu and Daniel Masaku.*

§ *That the division at the centre which is partly developed should be given to Joseph Muthini and Jones Mutuku.*

§ *That the division on the left side should be given to Wilson Kioko, Tilus Kiio and Felix Muli*

§ *That the proposed division of the plot No. 7 Kikambuani market is pegged on the wishes of all the beneficiaries except Wilson Kioko and the compatibility of the respective individuals.”*

8. On 9.2.2009, Mr. Mulwa, advocate stated as follows:

*“We are in agreement on distribution save on items 9 and 10 in the Affidavit sworn on 12.11.2008.”*

9. The contested asset is Plot No. 7 Kikambuani market which has 3 shops – A, B and C. Wilson demands wing C of the shopping building because he allegedly developed it with the authority of the deceased. Whatever importance he attaches to that contention, there is no evidence that he was given that shop as a gift during his life time within the meaning of section 35 (4) (d) of the Succession Act and so sadly I cannot uphold his proposal. Had he managed to convince his siblings that indeed he is wholly entitled to it, this court would have readily allowed him occupation thereof. However, it is clear that he is alone in that quest which for lack of evidential backing will fail. That being the case and since all other beneficiaries agree with the proposal of Jones contained in paragraphs 6,7, and 8 of his Affidavit sworn on 17.2.2009 above then that proposal is taken as reasonable and I will rule in his favour.

10. That being the only contested issue, let the Administrators now file an Application to confirm the grant in terms agreed and/or allowed and ordered as above.

11. Costs shall be in the cause.

12. Orders accordingly.

Dated and delivered at **Machakos** this **3rd** day of **June 2009**.

**Isaac Lenaola**

**Judge**

In the present of; Mr. Kimeu for objectors

No appearance for petitioner

**Isaac Lenaola**

**Judge**