



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**Succession Case 78 of 1994**

**ZIPPORAH M'ABURIA.....PETITIONER**

**VERSUS**

**M'MARETE M'ABURIA.....OBJECTOR**

**LAW OF SUCCESSION**

**Distribution of residue of net intestate estate in a polygamous union to be in  
accordance with each house, with surviving wife as an additional unit**

**RULING**

The late **M'ABURIA M'ANAMPIU** who died in 1984 had a polygamous union with three wives and was survived by the following persons in accordance with the houses –

**1<sup>st</sup> House**

1. Kanyamu M'Aburia Widow (now deceased)
2. M'imanene M'Aburia – son,
3. Marete M'Aburia – son.

**2<sup>nd</sup> House**

4. Zipporah M'Aburia – (widow), - Petitioner,
5. Kanampiu M'Aburia – son,
6. Mwiti M'Aburia – son,
7. Mbaya M'Aburia – son.

**3<sup>rd</sup> House**

8. Muthoni M'Aburia widow (now deceased),

## 9. Mutwiri M'Aburia – son.

The only asset left by the deceased was **Parcel Title No. NKUENE/KATHERA/93** comprising approximately 6.67 acres. The Petitioner, Zipporah M'Aburia was issued with a Grant of Letters of Administration on 26<sup>th</sup> July 2004 but has been unable to have the grant confirmed within the 12 months period required under Section 73 of the Law of Succession Act, due to numerous applications and petitions over the distribution of the residue of the deceased's estate.

A sense of fatigue was reached after over four years of really worthless disagreements. I say worthless because under the Succession Law as currently administered every "qualified" dependant of the deceased is entitled to a bite of the cherry called the "**residue of his net intestate**" estate. That is the property left, after all his known debts or liabilities have been provided for.

The law governing the distribution of an intestate's estate is Section 40 of the Law of Succession Act. The Section says –

"40 (1) Where an intestate was married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate shall, in the first instance, be divided among the houses according to the number of children in each house, but also adding any wife surviving him as an additional unit to the number of children.

(2) The distribution of the personal and household effects and the residue of the net intestate within each house shall then, be in accordance with the rules set out in section 35 to 38."

As observed above, the only net asset left by the deceased was his land, parcel No. NKUENE/KATHERA/93. Under the provisions of Section 40 (1) of the Act, that asset is firstly to be divided, not equally, but according to the number of children in each house, and then equally by each house, under the rules set out in Section 35 (5) of the Act.

Under the formula of Section 40 (1), there will be a total of seven (7) current survivors of the deceased estate, two from the 1<sup>st</sup> House, four from the 2<sup>nd</sup> House and one from the 3<sup>rd</sup> House. This means that the 2<sup>nd</sup> House has the largest number of units, and would therefore receive the largest share of the net intestate of the deceased. However upon distribution among themselves, they would still receive about the same area as would the house with one or two units. This is probably why there is broad agreement among the petitioner's and the objector's allies that the net intestate be distributed equally.

In addition to that broad agreement, there is also a refinement by the objector's written submissions, that the equal distribution be in accordance with the current areas occupied and developments thereon made by each of the beneficiaries.

What both counsel for the Petitioner and the Objector have omitted to provide in the equal distribution is the life interest for the survivor, widow, Zipporah M'Aburia. Since her house has the largest number of units with herself included her life interest will therefore come out of the provision for her children namely, Kanampiu M'Aburia, Mwiti M'Aburia and Mbaya M'Aburia.

Land Title No. NKUENE/KATHERA/93 will therefore be distributed as follows-

1. Zipporah M'Aburia – 0.30 acres life interest,
2. Kanampiu M'Aburia – 1.0 acres with 2 mud houses, tea, coffee for Marete – without water,
3. Mwiti M'Aburia – 1.0 acres with 6 semi-permanent houses, tea, water,
4. Mbaya M'Aburia 1.0 acres with 3 temporary houses
5. Mutwiri M'Aburia 1-10 acres with 2 semi-permanent houses, tea and water supply,

6. M’Imanene M’Imanene M’Aburia 1-10 acres with seven (7) semi-permanent houses, tea, coffee with water, supply,

7. Marete M’Aburia – 1-10 acres with six (6) semi-permanent houses, tea with water supply.

There shall accordingly be orders of confirmation of the temporary grant made on 26<sup>th</sup> July 2004 as stated above.

Each of the beneficiaries shall contribute equally to the sub-division of the estate and registration of his own title.

Dated, delivered and signed at Meru this 3<sup>rd</sup> day of July 2009.

**M. J. ANYARA EMUKULE**

JUDGE

**ZIPPORAH M’ABURIA.....PETITIONER**

**VERSUS**

**M’MARETE M’ABURIA.....OBJECTOR**

LAW OF SUCCESSION

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