

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO.29 OF 2004

**IN THE MATTER OF THE ESTATE OF ATHANAS NZAYWA
MUTESHI - DECEASED**

CATHERINE MURANDITSI MUTESHI AGEVI

MARGARET BUSIHILI

MUTESHI.....ADMINISTRATRIXES

VERSUS

SEVENZIA MUCHITI INGASO &

OTHERS.....BENEFICIARIES

JUDGMENT

1. This cause relates to the estate of the late Athanas Nzaywa Muteshi (deceased) who died on 7/1/2003 domiciled at Sinyerere Sub-Location within Trans-Nzoia County.
2. The deceased died intestate leaving behind dependants initially listed in the petition for letters of administration as follows:-
 - (i) *Sevenzia Muchiti Ingaso***
 - (ii) *Bibiana Wileta***
 - (iii) *Catherine Muteshi***
 - (iv) *Angelina Muteshi***
 - (v) *Margaret Muteshi***
 - (vi) *Antonina Muteshi and***
 - (vii) *Bendeta Muteshi***
3. The assets listed as comprising the estate were listed as follows;-
 - (i) *Trans-Nzoia/Sinyerere/824***

- (ii) Shares in Tea Factory**
- (iii) Shares in Sacco**
- (iv) Money at Standard Chartered Bank A/C
No.0100136053500 Kitale Branch.**
- (v) 13 Cows**
- (vi) 4 Goats**

4. The petitioner Sevensia Muchiti Ingaso, the petitioner was granted letters of administration with respect to the estate of the deceased herein on 29/9/2004.
5. The proceedings herein show that there was a lot of push and pull between other interested parties who were claiming to be dependants and the petitioner herein. There was also another Petition No.P&A Cause No.267/05 in Nairobi which was filed with respect to the same deceased. The file in Nairobi was transferred and consolidated with this present cause.
6. The proceedings further show that on 21/11/22 two other beneficiaries were added to the 7 listed above. The added beneficiaries were listed as;

- i) Estate of Fransica Nalisi Muteshi**
- ii) Estate of Benard Nabakwi Muteshi**

The beneficiaries therefore became 9 in number.

7. Justice Mrima further gave directions vide a Ruling dated 30/5/23 by revoking the grant confirmed on 7/7/2015 and issuing a fresh grant to Catherine Muranditsi Muteshi Agevi and Margaret Busihili Muteshi as the administratrixes of the estate of the deceased herein.
8. The judge in the same breath found that the beneficiaries of the estate are the following;

- (i) Catherine Muranditsi Muteshi Agevi**
- (ii) Margaret Busihili Muteshi**
- (iii) Vivian Jeane Wileta Walters**

- (iv) Angelina Mikalitsi**
- (v) Antonina Khasoha Muteshi**
- (vi) Bernadette Mutakale Muteshi**
- (vii) Sevencia Ingaso Muchiti**
- (viii) the Estate of Francisca Nalisi Muteshi**
- (ix) The Estate of Bernard Nabakwi Muteshi**

The estate of the deceased available for distribution was found to be;

- (i) Trans-Nzoia/Sinyerere/824**
- (ii) Tea proceeds from the estate and any other property that the deceased owned.**

9. The beneficiaries were then directed to proceed and file their respective proposed mode of distribution since they could not agree even after mediation process was attempted.
10. The court had earlier ordered for survey to be carried out and the Deputy Registrar to visit the parcel of land and file a report regarding the topography and other features in the parcel comprising the estate. The Deputy Registrar visited the parcel and on 24/1/25 filed her report in this cause.
11. The beneficiaries generally appeared to agree on equal distribution of the estate. The only point of contention was respective position of various parcels in relation to the main road, tea bushes, the river and riparian area.
12. The beneficiaries were given a chance to present their views and below is the summary of their representations.
13. Catherine Muranditsi Muteshi Agevi (**PW1**), testified that the subject parcel of land comprises various topographies including swamps. She stated that she got the services of a surveyor who went to the estate and sub-divided the parcel among the 8 children of the deceased. That she forwarded the

map proposing the sub-divisions to her siblings with a view to each choosing a portion but some of the siblings objected.

14. She stated that a fair distribution should consider developments carried out by the beneficiaries and the tea bushes. She stated that there is a family house within the estate where the deceased and her two deceased brothers are buried. According to her, Luhya Customs dictate that the last born should occupy that portion adding that Bernadette being the last born should take that portion. She stated the homestead area is about 1.96 acres with a house valued at Kshs.2 Million.
15. She conceded under cross-examination that Chrispus purchased a parcel from the deceased measuring 2 acres and took possession of the same. That there was no money left in the bank account of the deceased.
16. Boniface Kapiri (**PW2**) the valuer who carried out valuation of the parcel No.Trans-Nzoia/Sinyerere/824 stated that he carried out valuation of the said parcel and filed a report dated 26/4/2016. He stated that the total value of the said property was 26 Million adding that 8 acres thereof was under tea and that there was a homestead with a permanent house. He further confirmed presence of riparian land adding that he factored all that in his valuation report.
17. Bainito Ombulu Hussein (**PW3**), another surveyor who carried out survey work stated he divided the parcel Trans-Nzoia/Sinyerere/824 worth Kshs.25 Million in 2016 into the following categories namely;

(i) Two acres reportedly already sold and occupied by a purchaser.

- (ii) Another 2 acres to be sold to defray administration costs.**
- (iii) Tea Farm which could accommodate 3 beneficiaries with each getting 2.49 acres. He valued each portion to be about Kshsh.2.49 Million.**
- (iv) Homestead measuring 1.96 acres estimated to be valued at 2.49 Million all inclusive.**
- (v) Plain Farmland for the rest of the beneficiaries with each getting 3.95 acres each.**
- (vi) Swampy area measuring 3.4 acres to be set aside as it is riparian land.**

18. He clarified that he tried as much as he could to equally divide the parcel into 9 equal parts of equal value as per the valuation report. He stated that the tea farm was valued at 8 Million shillings and if 3 beneficiaries get the same everyone would get a portion valued at 2.49 Million. He stated that he took into account access roads, effect of erosion but did not include topographical issues.

19. Gabriel Ochieng Ogoti **(PW4)** an accountant engaged to prepare accounts on the estate stated his report covered the period 2003 to September 2021. He stated that the net value of the estate after factoring liabilities was 23 Million and if the same was to be divided by 9 beneficiaries each was to get 2.6 Million.

20. Angelina Muteshi **(DW1)**, a beneficiary in the estate proposed that the estate be divided equally among the 9 beneficiaries after subtracting $\frac{1}{2}$ acre where the homestead and gravesite is situate. She proposes that the surveyor's report

dated 8/2/23 be adopted in the distribution of the estate. The report dated 8/2/23 proposes that the estate be divided into 9 portions each portion measuring 3.5 acres and excluding the riparian area measuring 1.73 acres. 2 acres for a purchaser and 0.16 acres to provide access road. The report does not talk of tea bushes.

21. She opposed the proposal made by Catherine stating that the alleged debts are unverified and that there were no instructions to Catherine to incur debts. She proposes that the last born named Bernadette be allocated the homestead but that she should have an equal share like everyone because the homestead in her view is for all of them.
22. Margaret Muteshi (**DW3**) testified and also vouched for equal distribution of the estate with each portion having access to the road and the river. She further proposes the distribution be done according to the contours or topography to check soil erosion. She further proposes that the homestead including graveside be put under a trust for access of all beneficiaries but under the hands of Bernadette Mutakale Muteshi as the last born going by the Luhya Customs. She proposes that the area under tea to go to the estate of Francisca Nalisi Muteshi and Bernard Nabakwi Muteshi.
23. Virginia Wambui (**DW4**) a granddaughter and a representative of estate of Francisca Muteshi (deceased) vouched for equal distribution with each getting access to the road and the homestead be restored and maintained to enable children and grandchildren to visit. She asked for fairness in the distribution.

24. Evalyne Okaya (**DW5**), another grandchild also supported the equal distribution of the estate. She proposed that the portion comprising the home and graveyard be allocated to Bernadette Muteshi adding that each portion should have access to the road.

25. This court has considered the evidence given and the submissions made by the beneficiaries in this cause through their counsel. It is apparent that the beneficiaries agree in principal that the estate be distributed fairly and equally among the nine beneficiaries identified by Justice Mrima in his ruling dated 30/5/23. The named beneficiaries are;

- (i) Catherine Muranditsi Muteshi Agevi**
- (ii) Margaret Busihili Muteshi**
- (iii) Vivan Jeane Wileta Walters**
- (iv) Angelina Mikalitsi**
- (v) Antonina Khasoha Muteshi**
- (vi) Bernadette Mutakale Muteshi**
- (vii) Sevencia Ingaso Muchiti**
- (viii) The Estate of Francisca Nalisi Muteshi**
- (ix) The Estate of Bernard Nabakwi Muteshi**

26. The only point of departure is that while Catherine Muteshi proposes that 2 acres be curved out and sold to cover for liabilities with the remainder being divided equally. Margaret Muteshi proposes that the portion be divided into 9 equal portions as per surveyor's map dated 9/12/22. She proposes that liabilities like legal fees be paid by the party who engaged the legal services.

27. The mode of distribution of an estate of a deceased person with no surviving spouse is provided under section 38 of Law of Succession Act. Section 38 of Law of Succession Act provides as follows;

“Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of sections 41 and 42, devolve upon the surviving child, if there be only one, or shall be equally divided among the surviving children”

The proposal that the net estate be distributed equally among the 9 dependants is therefore well grounded in law. The only complexity in this matter is that the estate comprising Trans-Nzoia/Sinyerere/824 around 35.23 acres as per County Surveyor’s report is not uniform in terms of valuation. There are 8 acres with tea bushes and a homestead with a permanent house that also comprises gravesite of the deceased in this cause and other deceased family members. It is also agreed that there is a riparian side measuring about 1.73 acres. The Deputy Registrar of this court visited the parcel and found that the river cuts through the lower side with Eucalyptus trees on the riparian land. The pictures of the area including growing trees is included in the report.

28. This court finds that all the beneficiaries are in agreement that a purchaser by the name of Arochi Crispus bought 2 acres which he currently occupies. That portion will therefore go to him.
29. That court has been told that there is Kshs.700,000/- on deceased’s person account. If that is the case, (because no evidence was tendered). I will direct that part of that amount shall go towards payment of surveyors’ fees while the balance of the same and any amount either in the bank (Standard Chartered Bank A/C No.0100136053500) be divided equally among the 9 beneficiaries identified by court in the ruling dated 30/5/23.

30. Now going back to the main asset in the estate which is the parcel of land known as Trans-Nzoia/Sinyerere/824, after subtracting 2 acres to the purchaser where he is already in occupation and fenced, the remaining portion will be divided equally and fairly factoring in as much as possible value of the parcel. In order to factor in the developments like tea bushes and the homestead and ensure equitable distribution this court finds that it is in the interest of justice to give beneficiaries who will benefit from a portion with tea bushes, a portion less by half an acre. The same shall apply to the one who will take the homestead. I am not persuaded that leaving out the homestead in the hands of a trust will bring harmony in the family. Instead it is likely to breed disharmony or disagreement now or in the future. To avoid the same, I find that all beneficiaries agree that the last born named Bernadette Mutakale Muteshi should be given the homestead in accordance with the Luhya Customs. I have looked at the photographs of the house taken during the visit by Deputy Registrar of this court and the house looks old. Therefore to say that the beneficiary of the homestead be given only 1.96 acres, in my view is not fair and equitable. A fair share is 3 acres with the homestead. After all, the benefactor will be the one receiving the visiting siblings and grandchildren to the same house when they go visiting. She therefore needs a bit of space.

31. I also consider that the tea bushes have been left unpicked and unattended for a while. For them to produce optimally they require tending and management. In that regard this court finds that those beneficiaries who will share the parcel with the

tea bushes, they will take 3 acres each and the 3rd beneficiary who will get 2 acres of tea bushes will get 3.2 acres in total.

32. There is a proposal that 1.73 acres comprising the riparian land be left without anyone. That is risky and is a potential source of conflict either now or in future. The beneficiary whose share touches on riparian land will get 3 acres plus 1.73 acres riparian land.

33. To ensure fairness and equity I direct that the portion remaining after the parcels with tea bushes, riparian and homestead have been subtracted, the remaining portion be divided equally among the remaining 4 beneficiaries. All the above mentioned parcels will contribute access roads in equal ratio.

34. In order to avoid a situation where one beneficiary or some beneficiaries feel disadvantaged and/or favoured, I will direct the 2 surveyors herein namely the County Surveyor Mr E. Khatili and Bainitos Ombulu Hussein who were previously engaged do revisit the parcel namely Trans-Nzoia/Sinyerere/824 and carry out the survey and demarcation of the plots as follows;

(a) 2 acres belonging to Mr Arochi Chrispus.

(b) 3 acres comprising the homestead and gravesite to go to Bernadette Mutakale Muteshi (the last born as per Luhya Customs).

(c) A parcel to be marked "A" with Tea bushes measuring 3 acres.

(d) Another parcel with Tea bushes measuring 3 acres to be marked "B".

(e) A parcel with 2 acres of Tea bushes and arable plain parcel measuring 3.2 acres to be marked "C".

(f) A parcel measuring 3 acres with 1.73 acres riparian land to be marked "D".

(g) The remaining balance of the estate be divided into four equal portions to be marked "E","F","G" & "H".

The surveyor to deduct in equal ratio the 9 parcels to take care of access roads to each of the 9 parcels.

Upon finalizing the survey work in 2 weeks' time after the delivery of this judgment, the parties will appear in person or through recognized agent or representative to do balloting exercise and each beneficiary to pick their parcels randomly from a ballot box to be supervised by the Deputy Registrar of this court. Any beneficiary who might be absent will have their ballots randomly picked by the Deputy Registrar. Upon picking the respective plots or parcels as per the ballots picked, the Deputy Registrar shall make a report accordingly and the grant will be confirmed accordingly.

For avoidance of doubt, the surveyors' fees will be paid out of any monies either in the bank or in the pension account. The balance to be shared equally among the 9 beneficiaries.

In the event and if at all there is no money in the said accounts, I direct that the surveyors' fees be paid equally by all the beneficiaries and to be recovered from them as a civil debt in the event of a default by any of them.

The advocates' fees be paid by respective beneficiaries who engaged them.

I will make no order as to costs so each to pay own costs.

**DELIVERED, DATED and SIGNED at KITALE this15th
..... day ofOCTOBER....., 2025.**

HON JUSTICE R.K. LIMO
KITALE HIGH COURT

Judgment delivered in open court

In the presence of

Sevenzia Muhiti

Angelina Muteshi

Gulenya for one of the beneficiaries

Mugo for 2nd administrator

Muganda for one of the administrators

Duke/Chemosop- Court assistants