

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO.31 OF 2016

**IN THE MATTER OF THE ESTATE OF MATHEW MBUTHIA
WACHIRA - DECEASED**

**MARY WANGOI MBUTHIA.....1ST
PETITIONER/RESPONDENT**

**NELLY WANJIRU WACHIRA.....2ND
PETITIONER/RESPONDENT**

**GITHINJI STEPHEN
MBUTHIA.....BENEFICIARY/RESPONDENT**

VERSUS

**TERESIA MUTHONI MBUTHIA.....1ST
OBJECTOR/APPLICANT**

**CLARRYS NYAMBURA WACHIRA.....1ST
OBJECTOR/APPLICANT**

JUDGMENT

1. This cause relates to the estate of the late Mathew Mbutia Wachira who died on 19/1/2011 domiciled at Nzoia Scheme, Sinoko Location, Kakamega County. He died intestate leaving the following dependants;

A. 1st House

(i) Nomi Wanjiru Mbutia - widow (deceased)

- (ii) Peter Mwangi Mbutia
- (iii) Teresia Mbutia
- (iv) Samson Mbutia
- (v) Stephen Mbutia
- (vi) Ann Waithera
- (vii) Clarrys Nyambura and
- (viii) Mary Mbutia.

B. 2nd House

- (i) Mary Wangoi Mbutia -2nd wife
- (ii) Gladys Mbutia
- (iii) Teresia Mbutia
- (iv) Nelly Mbutia and
- (v) Maureen Mbutia

2. The deceased left behind the following assets comprising the estate;

(i) Kakamega/Nzoia-10/27 measuring 12.6ha.

(ii) Kakamega/Nzoia Township/26

3. Naomi Wanjiru Mbutia, Peter Mwangi Mbutia, Mary Wangoi Mbutia and Nelly Wanjiku Wachira were jointly granted a grant of letters of administration on 10/8/2016.

4. The grant was confirmed on 22/6/2017 and the estate distributed as follows;

A. Kakamega/Nzoia-10/27

- (i) Naomi Wanjiru Mbutia - 6.66acres
- (ii) Mary Wangoi Mbutia - 6.66acres
- (iii) Peter Mwangi Mbutia - 3acres
- (iv) Samson Macharia Mbutia - 3acres

- (v) Stephen Githinji Mbutia - 3acres
- (vi) Teresia Muthoni Mbutia -1acre
- (vii) Clarrys Nyambura -1acre
- (viii) Anne Waithera -1acre
- (ix) Mary Mwihaki -1acre
- (x) Maureen Njoki -1acre
- (xi) Nelly Wanjiru -1acre
- (xii) Pauline Nyambura -1acre
- (xiii) Terry Muthoni Wachira -1acre
- (xiv) Gladys Njeri Mbutia -1acre
- (xv) Brian Mbutia Wachira -1acre

B. Commercial property on Kakamega/Nzoia

Township/26

- (i) Naomi Wanjiru Mbutia
 - (ii) Mary Wangoi Mbutia
- To share equally.

5. The record shows that after confirmation of grant, wrangles started on 23/2/23 when Teresia Muthoni Mbutia and Clarrys Nyambura Wachira applied for revocation of grant vide summons for revocation of grant dated 16/11/22 on grounds that the daughters of the deceased from the 1st house were discriminated.
6. They also complained that the remaining administratixes were from the 2nd house after the demise of Naomi Wanjiru and Peter Mwangi Mbutia.
7. The court presided by Justice Mrima on 29/3/2023 gave directions that the summons for revocation of grant dated 16/11/2022 shall be canvassed via viva voce evidence but urged the parties to try negotiations when the matter came up on 4/4/2023.

8. On 18/5/2023, Justice Mrima recorded partial settlement/distribution of the estate by revoking the confirmation of grant issued on 22/6/2017 and partially confirming the grant with respect to the 2nd house as follows;

A. Kakamega/Nzoia-10/27

- | | | |
|-------|--------------------------|-------------|
| (i) | Mary Wangoi Mbuthia | - 6.66acres |
| (ii) | Brian Mbuthia Wachira | -1acre |
| (iii) | Gladys Mbuthia | -1acre |
| (iv) | Terry Muthoni Wachira | -1acre |
| (v) | Nelly Wanjiku Mbuthia | -1acre |
| (vi) | Pauline Nyambura Mbuthia | -1acre |
| (vii) | Maureen Njoki Mbuthia | -1acre |

9. The record further shows that the 1st house were given more time to resolve their differences and the matter fixed for mention on 27/7/2023.

10. Later on 27/7/23 there appears to have been misunderstanding on the manner subdivisions were to be carried out and the court directed that an order in respect to orders of 18/5/23 be extracted and served on the surveyor for clarity. The court also gave more time to the 1st house to resolve their differences and in default the matter was to be heard on 24/1/24 with respect to the distribution of the remaining part of the estate.

11. The hearing started on 24/1/24, Stephen Mbuthia **(PW1)** testified that he was from the 1st house. That the parcel of land known as Nzoia Scheme/27 measures 30 acres. That the 1st

house got 19.9 acres with the balance going to the 2nd house. He stated that their father had distributed his land and showed each beneficiary where to utilize. He stated that their mother had been allotted 6.6 acres. He proposed that their mother's share be divided equally among the 4 surviving children with each getting 1.32 acres. He opposed the proposal made that the children of his deceased sisters that they be given a share of their mother's share of 6.6 acres. He further proposed that Plot No.26 be sold and proceeds shared equally among all the children.

12. Mary Wangoi Mbutia (**PW2**) from the 2nd house and surviving spouse of the deceased testified and stated that the 2nd house was satisfied with 12.6 acres given to them and were all contented. She stated that the remaining share belongs to the 1st house.

13. Samson Macharia Mbutia (**PW3**) supported PW1 stating that the deceased subdivided his property among all his children and 2 wives. He stated that the wives got 6.6 acres each, the sons got 3 acres while the daughters got 1 acre each. He stated that there are 2 daughters in the 1st house while the 2nd house has 6 daughters.

14. Teresia Muthoni (**DW1**) testified that she was from the 1st house and that her mother and stepmother from 2nd house had agreed on how the estate was to be shared. That 12 acres were to go to 2nd house while 19.9 acres was to go to 1st house. She stated that their mother from the 1st house passed on before the distribution on the basis of initial agreement was finalized. She stated that the children from the 1st house are 7. That the 19.9 acres remaining be shared equally among the 7 children

from the 1st house. He denied that their late father, the deceased herein left a Will. She further denied signing a consent to the initial distribution. She stated that the children of their deceased sisters should get a share of their respective late mothers. She stated that the 2nd house agreed on how to share their share among themselves and it is only the 1st house that is not in agreement on how to share 6.6.acres left behind by their late mother.

15. This court has considered the evidence tendered and written submissions by both the sons on one hand through Githinji Stephen Mbuthia dated 23/6/25 and Teresia Muthoni Mbuthia and Clarrys Nyambura Wachira dated 7/7/25 on the other.

16. What is in dispute here is how the remaining estate of the late Mathew Mbuthia Wachira should be distributed. This is because as observed above the said estate had been partially confirmed with 12.6acres going to the 2nd house. The beneficiaries from the 2nd house agreed and the 12.6acres was subdivided and the court has been informed that titles are already out and each beneficiary from the 2nd house has her own title.

17. The only dispute involved distribution of the remaining part of the estate which is 18.84acres from Kakamega/Nzoia/27 and Kakamega/Nzoia Township/26 measuring 50x100ft. While the daughters prefer that the 18.84acres in Nzoia Scheme be shared equally among all the 7 children from the 1st house with each getting 2.69acres and the plot at Nzoia Township be divided equally between the 1st and 2nd houses, the sons prefer that they

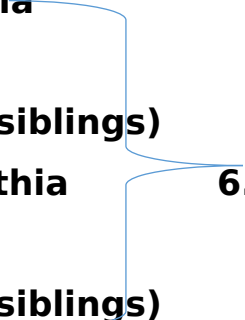
as the sons retain approximately 3 acres they already have and on top of that they get a share of 6.6 acres belonging to their late mother. They prefer the 6.6 acres be shared by the remaining 4 surviving children from the 1st house with each getting 1.32 acres.

18. This court finds that there was a consent filed dated 4/4/2017 where the administrators agreed on how the estate was to be shared. The agreement was adopted by Justice Chemitei on 22/6/2017 and the mode of distribution was by and large fair and equitable and even though Teresia Muthoni Mbutia and Clarrys Nyambura Wachira later raised issues, the issues raised though legitimate were matters which ought to have been resolved. This court finds that the two houses having agreed that the property known as Kakamega/Nzoia/Township/26 measuring 50x100ft be divided equally among the 2 houses, the same shall be divided one half will go to Mary Wangui Mbutia and the other half shall be sold and proceeds be shared equally among the 7 children from the 1st house namely;

- (i) Pauline Wanjiru on behalf of the late Peter Mwangi.**
- (ii) Samson Macharia Mbutia**
- (iii) Teresia Muthoni**
- (iv) Promonah Mbutia on behalf of the late Ann Waithera**
- (v) Clarrys Nyambura Mbutia**
- (vi) Stephen Githinji Mbutia**
- (vii) Rachael Mbutia to hold in trust of the children of Mary Mwehaki Mbutia**

The above distribution is in accordance with the provisions of section 38 of Law of Succession Act.

19. This court further finds that in view of the fact that the sons of the deceased have already benefited from approximately 3acres from the initial distribution of the estate herein, it is therefore only fair that the daughters do benefit from approximately 6.6.acres share that was given to their mother and the 1st wife the late Naomi Wanjiru Mbutia. The 6.6.acres will be divided equally only among the daughters from the 1st house as follows;

- (i) Teresia Muthoni Mbutia**
 - (ii) Promonah Mbutia**
(to hold in trust of her siblings)
 - (iii) Clarrys Nyambura Mbutia**
 - (iv) Rachael Mbutia**
(to hold in trust of her siblings)
- 6.6acres equally**
- 

The above distribution will mean that from the remaining parcel in Kakamega/Nzoia/27 daughters from the 1st house will get a total of approximately 2.65acres because from the initial distribution each got 1acre so in total they will get 2.65acres while the sons will retain 3acres. That in my view is equitable and fair in view of the circumstances obtaining and a certificate of confirmation will issue to that effect. This being a family matter I make no order as to costs.

DELIVERED, DATED and **SIGNED** at **KITALE** this**30th** .

..... day of**OCTOBER**....., 2025.

HON JUSTICE R.K. LIMO
KITALE HIGH COURT

Judgment delivered in open court

In the presence of the petitioners

Teresia Muthoni

Charles Nyambura

Githinji Mbuthia

Samson Mbuthia

Pauline Wanjiru

Rachael Mbuthia

Timothy Mbuthia

Duke/Chemosop - Court assistants