

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

P&A CAUSE NUMBER 10 OF 2023

IN THE MATTER OF THE ESTATE OF PAULO MURONO MOLA
(DECEASED)

MAURICE ANG'ANYA MURONO OBJECTOR/APPLICANT

VERSUS

EMILY SHITANDIPETITIONER
/RESPONDENT

JUDGMENT

1. This matter has had a chequered history. The cause was first lodged in Kisumu High Court vide Succession Cause No. 503 of 2013 wherein the 1st Petitioner herein was issued with a grant of letters of administration intestate on 24/3/2014. The Objector herein and another later filed an

application dated 5/9/2014 wherein they sought for an injunction to restrain the 1st Petitioner herein from accessing sugar cane proceeds from Mumias Sugar Company Limited pending determination of the succession cause. The parties later compromised the said application wherein it was agreed that the sugarcane proceeds be deposited with the Deputy Registrar of the Court and further it was agreed that the Objector and other beneficiaries be appointed as co-petitioners of the 1st Petitioner herein and thus a fresh grant dated 16/10/2014 was issued in the names of Emily Shidandi Muroño, Hellen Mukoma Malenya, Leonida Makokha Muroño and Maurice Angányá Muroño. The parties were later referred to Court Annexed Mediation which did not succeed. The 1st Petitioner later filed summons for confirmation of grant dated 18th November 2024 and accompanied the same with a proposed mode of distribution of the estate of the deceased. The Objector herein followed with a protest dated 20/1/2025 to the said summons for confirmation wherein he gave his proposal on how the estate should be shared. The Petitioner duly filed a response to the said protest in which she vehemently opposed his proposed mode of distribution of the estate and urged the court to reject it and allow her mode of distribution. It transpired from the pleadings that the deceased had six wives meaning that there are six households. This is an old

matter having been commenced in 2013 and it is only fair that litigation comes to an end.

2. Due to the rival modes of distribution of the estate, directions were taken to the effect that the Protest and summons for confirmation of grant do proceed by way of viva voce evidence.
3. **Maurice Angányá Muroño (OBW1)** testified that he was the first born child of the deceased and that the petitioner is the deceased's 3rd wife. He adopted his affidavit of protest as his evidence in chief. In his affidavit of protest, he listed all the houses of the deceased and the respective children as well as two children born out of wedlock namely Charles Omondi Muroño and Margaret Muroño. That his proposal on distribution was as follows:

S.Wanga/Bukaya/326(1.42HA)

1st House

Martin Owino

Maurice Anganya

Gaudenzia Wesonga

Florence Achieng (late)

Jackline Angatia

Caroline Atieno.....1.8 Acres jointly

2nd House

Selestine Awino

Asmini Maero (late)

Christine Mwima (late)

Jackline Masakhwe

Gladys Akinyi

Suleiman Weyimi

Consolata Auma.....1.8 Acres jointly

Uholo/Tingare/8 (4 Acres)

1st House

Maurice Angányá Murono

Gaudenzia Wesonga

Florence Achieng (late)

Jackline Angatia

Caroline Atieno

Martin Owino.....2 Acres jointly

6th House

Aloyce Oduor

Michael Mola

Vincent Anangwe

Agnes Okwaro

Philister Okwaro.....2 Acres jointly

Uholo/Tingare/1(2.6 HA)

1st House

Maurice Anganya Murono

Gaudenzia Wesonga
Florence Achieng (late)
Jackline Angatia
Caroline Atieno
Martin Owino

2nd House

Asmini Maero
Christine Mwima (late)
Jackline Masakhwe
Gladys Akinyi
Suleiman Weyimi
Consolata Auma.....1 Acre jointly

4th House

Christopher Owino
Rose Akinyi
Josephine Adhiambo
Joyce Maloba.....1/2 Acre jointly

5th House

George Saitoti
Benard Okutoyi
Julius Shikuku
Sainabu Achieng
Mola Milke.....1 Acre jointly
Charles Omondi.....1 Acre

Margaret Murono.....1 Acre

Uholo/Tingare/932 (3.7 HA)

3rd House

Agnes Wesa

Lucas Ouma

Repha Aoko

Joshua Mwima

Moses Okwako

Kenedy Wesonga

Daniel Mukhwana

Phanice Atieno

Richard Ongogo

Alfred Keya

Florence Atieno.....Whole jointly

Uholo/Tingare/15 (1.4HA)

4th House

Christopher Owino (late)

Rose Akinyi

Josephine Adhiambo

Joyce Maloba.....Whole jointly

Uholo Tingare/2 (0.72 HA)

5th House

George Saitoti

Benard Okutoyi

Julius Shikuku

Sainabu Achieng

Mike Mola.....Whole jointly

Uholo/Tingare/4 (2.8 HA)

6th House

Aloyce Oduor

Michael Mola

Francis Ochieng

Vincent Anangwe

Kelesencia Okwaro.....Whole jointly

Uholo/Tingare/945 (0.60 HA)

Charles Omondi.....Whole

Ywaya Market plot (unregistered)

2nd House

Asmini Maero
Christine Mwima (late)
Jackline Masakhwe
Gladys Akinyi
Suleiman Weyimi
Consolata Auma.....1 Door shop jointly

5th House
George Saitoti
Benard Okutoyi
Julius Shikuku
Sainabu Achieng
Mike Mola.....1 Door shop jointly

Uholo/Tingare/1660 (0.40 HA)

1st House

Martin Owino
Maurice Anganya
Gaudencia Wesonga
Florence Achieng (late)
Jackyline Angatia
Caroline Atieno.....50 ft x 100 ft plot jointly

2nd House

Asmini Maero
Christine Mwima (late)

Jackline Masakhwe

Gladys Akinyi

Suleiman Weyimi

Consolata Auma.....50 ft x 100 ft plot
jointly

3rd House

Emily Shitandi

Agnes Wesa

Lucas Ouma

Repha Aoko

Joshua Mwima

Moses Okwako

Kenedy Wesonga

Daniel Mukhwana

Phanice Atieno

Richard Ongogo

Alfred Keya

Florence Atieno.....50 ft x 100 ft plot
jointly

4th House

Christopher Owino (deceased)

Rose Akinyi

Josephine Adhiambo

Joyce Maloba.....50 ft x 100 ft jointly

5th House

George Saitoti

Benard Okutoyi

Julius Shikuku

Sainabau Achieng

Mike Mola.....50 ft x 100 ft plot jointly

6th House

Leonida Makokha

Aloyce Oduor

Michael Mola

Francis Ochieng

Vincent Anangwe

Kelesencia Okwaro.....50 ft xx 100 ft plot
jointly

plot

Charles Omondi Muroño.....50 ft x 100 ft
plot

Margaret Muroño.....50 ft x 100 ft

Money in bank account

Number 068016147504 at

Equity BankKshs 60, 520/ to Maurice
Anganya

To hold in trust for 1st

House(Kshs

.....Kshs 60, 520/ to Leonida
Musungu

Trust for the 2nd
House

.....Kshs 60, 520 to Emily
Shitandi

Murono in trust for the 3rd
House

.....Kshs 60, 529/ to Rose Akinyi in
trust for
The 4th House

.....Kshs 60, 520/ to Hellen Mukoma
Malenya

In trust for the 5th House

.....Kshs 60, 520/ to Leonida Makokha
in

Trust for the 6th House

.....Kshs 30, 260/ to Charles
Omondi

.....Kshs 30, 620/ to Margaret
Murono

On cross examination, he stated inter alia; that the deceased had not subdivided the land before he died; that some of the sons got married and that the deceased had shown them land where they should reside; that Lukas Aneya is the first son of the Petitioner while Martin Owino is the objector's young brother; that his biological mother separated with the deceased and that he was brought up by the Petitioner; that in his proposal, he did not involve Joshua in parcel number S/Wanga/Bukaya/326 as he had another portion elsewhere; that in his proposal he included Martin Owino in plot No. Uholo/Tingare/8 despite being considered in plot No. S/Wanga/Bukaya/326; that he allocated himself four parcels of land in his proposals; that Asmin Maero and Christine Mwima are deceased but that he proposed that they get a share on Yuaya market plot; that the Petitioner resides on plot number 932 and not 1660; that Yuaya plot belongs to the County Government and is not in the name of the deceased. He also confirmed that Benard Okutoyi and Julius Shikuku are now serving jail terms for intermeddling with the land and boundaries set by the deceased. That plot number Tingare/2 is near River Nzoia and that the deceased had proposed the beneficiaries that he had proposed to occupy it. That it is not true that the deceased had written a will. That his document had details of equity bank account and that his young brother was a son of the deceased.

4. **Charles Omondi Murono (OB-W2)** stated that the objector is his brother while the petitioner is his step mother and that the deceased was his father. He confirmed that he did not file affidavit of protest or statement on record. He was however examined in chief as he was listed as a beneficiary.

On cross examination, he stated that he agreed with the objector that he be given Uholo/Tingare/945. He confirmed that the Petitioner had proposed that he be given the same parcel Uholo/Tingare/945. That his problem is the entire distribution to family members.

On re-examination he still confirmed that there is a problem with the entire distribution.

That marked the close of the Objector's case.

5. **Emily Shitanda Murono (PET-PW1),** adopted her statement dated 18/6/2025 as her evidence in chief. She stated further that she stands by her proposal, and that the deceased had distributed the estate prior to his death.

On cross examination, she stated that she took care of the objector since childhood and who is her step son. That they were to file the petition together but the objector did not show up for the meeting as directed by the court. That the Objector was allocated two acres excised from plot number 8. She stated further that each wife had been given their own parcel by the time of the death of the

deceased and that the oldest sons had been given two acres each by the deceased. That they brought in her co-wife to plot number 8 as directed by the deceased. She stated further that the deceased had 40 children, 22 of whom were sons and that some of the daughters were yet to be married.

6. **Leonida Makhokha Muroho (PET-PW2)** adopted her statement dated 18/6/2025 as her evidence in chief.

On cross examination, she stated that **she** married the deceased in 1991 and she stayed in the Petitioner's compound for 12 years before the deceased settled her in her in plot No. 4 but it was in a swampy area so the deceased proposed to relocate her to plot No. 8. That she moved to plot number 8 in 2006 and that the objector also has his own portion in the same land parcel. That the said plot no. 8 is 4 acres. That the whole family obeyed the wishes of the deceased except the objector who would always disrupt family meetings. That all the seven older sons of the deceased including the objector were given 2 acres each. That nobody discriminated the objector, on the contrary, it is the objector who misused the burial funds for the deceased.

On re-examination, she reaffirmed that the deceased allocated her plot number 4 but later proposed to move her to plot number 8. That marked the close of the Petitioners case.

7. The petitioner opted to rely on the evidence tendered while the Objector filed submissions.
8. The Objector's submissions by and large seek for revocation of the grant issued to the petitioner.
9. I have considered the proceedings and the Objector's submissions. I find the issue for determination is whether the objection has merit.
10. **Section 66 of the Law of Succession Act** states that:

When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference—

 - (a) surviving spouse or spouses, with or without association of other beneficiaries;
 - (b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by Part V;
 - (c) the Public Trustee; and
 - (d) creditors:

Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.

11. **Section 76 of the Law of Succession Act** provides as follows:

A grant of representation, whether or not confirmed, may at any time be revoked or annulled if the court decides, either on application by any interested party or of its own motion—

(a) that the proceedings to obtain the grant were defective in substance;

(b) that the grant was obtained fraudulently by the making of a false statement or by the concealment from the court of something material to the case;

(c) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently;

(d) that the person to whom the grant was made has failed, after due notice and without reasonable cause either-

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court order or allow; or

(ii) to proceed diligently with the administration of the estate; or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances.

12. I note from the objectors submissions that the petitioner failed to seek the consent of other family members in order to petition for the grant. From the wording of section 66 above, the petitioner being a widow of the deceased was perfectly in her place petitioning the court for grant of the letters of administration over the estate of her late husband. Furthermore, no-co-wife has protested or objected to the said grant. In fact, PW2 is the petitioner's co-wife and who is actually in support of the petitioner. It was likewise PW1's evidence that the court had directed that they sit as a family and agree whether she should petition for the grant together with the Objector. Still, the Objector decided to attend the family meeting. The objector has not rebutted that evidence.

13. It is also the Objector's case that the Petitioner failed to include the details of the bank account in the distribution. However, the Petitioner rebutted that she did not know any bank accounts details of the deceased and asked the Objector to disclose any if they are within his knowledge. PW2 also testified that the Objector had confiscated a notebook of the deceased that contained all the details of how the deceased shared the family land and other financial details. Indeed in the evidence of the Objector, he mentioned that he got the Equity Bank account details in a notebook of the deceased. That being the position, I find that the Objector was truly notified and involved in the succession proceedings by the Petitioner but that he had become uncooperative forcing the Petitioner to proceed with the rest of the beneficiaries. It is instructive that the rest of the beneficiaries do not have a problem with her except the Objector herein. The Objector's application for revocation was later abandoned by the Objector and who filed an affidavit of protest dated 20/1/2025 and that the same together with the Petitioner's summons for confirmation of grant were canvassed by way of viva voce evidence as aforesaid. Hence, the summons for revocation of grant has been overtaken by events.

14. The only issue for determination is now on distribution of the estate. From the evidence on record, it is not disputed

that the deceased had given each house parcel of land where they resided and cultivated. I have perused both proposals for the Petitioner and the Objector. A comparison of the same reveals that the Petitioner's proposal seems to me to be more reasonable as all houses have been catered for. The only addition will be pertaining the money in Equity bank account as presented in the Objector's proposed mode of distribution. Indeed, the Petitioner has denied the issue of monies in a bank account but that the Objector presented evidence of an Equity Bank account number 0680161147504 and the proposed mode of distribution of the funds therein. The Petitioner's attempt to gloss over this asset must be rejected since all the assets of the deceased must be brought on board for distribution among the beneficiaries. I am satisfied that this extra asset should be included in the schedule of distribution by the Petitioner.

15. In view of the foraging observations, it is my finding that the Petitioner's summons for confirmation of grant dated 18/11/2024 has merit and is allowed. The Objector's affidavit of protest dated 20/1/2025 succeeds only to the extent that the share in Equity Bank Account Number 0680161147504 be distributed as proposed by the Objector. I hereby confirm the grant dated 10/10/2014 in the following terms:

- a) The estate of the deceased except the money in Equity Bank Account Number 0680161147504 shall be distributed in accordance with the Petitioner's proposed mode of distribution.
- b) The money in Equity Bank account number 0680161147504 shall be distributed as proposed by the Objector.
- c) Each party to bear their own costs.

Dated and delivered at Siaya this 19th day January 2026.

D.KEMEI

JUDGE

In the presence of:

Maurice Ang'anya Murono.....Objector.

N/A Luchivya.....for Petitioner.

Maureen/Kimaiyo.....Court Assistant.