

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**SUCCESSION CAUSE NO.205 OF 2007**

**IN THE MATTER OF THE ESTATE OF REUBEN STOCK  
MAKONA (DECEASED)**

**1. JOSEPH MAKONA STOK  
2. JEREMIAH MAKONA  
3. MOSES MAMAI MAKONA** } .....PETITIONERS

**VERSUS**

**JOSEPH LUMBASI WEKANGA.....  
OBJECTOR**

**JUDGMENT**

1. This cause relates to the estate of the late Reuben Stock Makona (deceased) who died on 6<sup>th</sup> June 2004 domiciled at Makani Farm Kiminini Trans Nzoia County.
2. The deceased died intestate leaving behind the following listed dependants in the petition namely;
  - i) *Teresia Naliaka Stock - widow*
  - ii) *Rose Naswa Reuben - widow*
  - iii) *Margaret Oolu Sitoko - widow*
  - iv) *Grace Nafula*
  - v) *Jeremiah Makona*
  - vi) *Edward Makona*
  - vii) *Catherine Sabina*
  - viii) *Jesse Makona*
  - ix) *Augustine Makona*

- x) *Everlyne Chebukuk*
- xi) *Sophia Makona*
- xii) *Moses Makona*
- xiii) *Samson Makona*
- xiv) *Alice Makona*
- xv) *Felistus Makona*
- xvi) *Joseph Makona*
- xvii) *Eunice Makona*
- xviii) *Violet Makona*
- xix) *Michael Makona*
- xx) *Zacharia Makona*
- xxi) *Joyce Makona*
- xxii) *Kennedy Makona*
- xxiii) *Emmanuel Makona*
- xxiv) *Joan Makona*
- xxv) *Judith Makona*
- xxvi) *Jairu Makona*
- xxvii) *Isaac Makona*
- xxviii) *James Makona*

3. The estate comprises the following assets;

- i) Land L.R No.8995 - 201 acres**
- ii) L.R.8996 -201 acres**
- iii) Household Property**

4. The grant of letters of administration was issued on 19/2/2009 to Jeremiah Makona, Moses Mamai Makona and Joseph Makona Stok.

5. The 3<sup>rd</sup> administrator Joseph Makona Stok vide summons for confirmation of grant dated 16/1/2018 moved this court for confirmation of grant and gave his proposed mode of distribution adding that the following be catered for first before distribution.

(a) *The family of the late J.M. Wafula - 8 acres - purchaser.*

(b) *Maurice Leo Simiyu -52 acres - purchaser*

(c) *Kamkongi Family - 2 acres - gift inter vivos*

6. The 3<sup>rd</sup> petitioner proposed that the balance of 60 acres be distributed to the 3 houses as follows;

**a) 1<sup>st</sup> House (8 beneficiaries) - 44.1acres**

**b) 2<sup>nd</sup> House (6 beneficiaries) - 33.1acres**

**c) 3<sup>rd</sup> House (15 beneficiaries)-82.8acres**

He contends that his proposal is anchored under section 40 of Law of Succession Act.

7. The 1<sup>st</sup> and 2<sup>nd</sup> petitioners/administrators on the other hand have made the following proposals;

**A. Land Parcel NO.8996 measuring 201 acres**

i) 1<sup>st</sup> house 62 acres

ii) 2<sup>nd</sup> house 58 houses

iii) 3<sup>rd</sup> house 10 acres

iv) The family of the late Maurice Leo Simiyu -62 acres- purchaser

- v) the family of George Wekanga - 2 acres gift by deceased
- vi) Family of late Daniel Maikuma Makona - 2 acres- gift by deceased
- vii) Family of Martin Nyongesa Makona - 2 acres- gift by deceased
- viii) ACK Church - 0.25acrs
- ix) Balance of 4.75acrs to be sold to cover survey and other expenses

**B. Land Parcel No.8995 measuring 26.5 acres**

- i) 3<sup>rd</sup> House - 18.5acres
- ii) The family of late J.M Wafula - 8 acres- purchased from deceased.

**C. Commercial Plot at Matunda Trading Centre (Kabuyefwe market) measuring 0.5 acres**

- i) 3<sup>rd</sup> house

8. Joseph Lumbasi Wekanga, the protestor herein filed a protest to the 2 proposals made by the administrators stating that he was doing so on behalf of Kamukongi Clan. According to him his late father one George Wekanga Munialo jointly purchased parcels Nos L.R 8995 and 8996 with the deceased in this cause.

9. He claims that his late father had share of 23 acres in parcel No.L.R 8996 and that the deceased died before transferring the parcel to his late father. He further claims his family has been in occupation of 16 acres in the estate even during the

lifetime of deceased and protested the petitioners' proposal to gift them only 2 acres.

10. He alleges that the petitioners' proposal would render them squatters yet none of the 3 houses of the deceased have ever occupied where they utilize.
11. He contends that if the estate is distributed as proposed by the administrators it would mean that they will be evicted from where he claims to have lived for over 60 years.
12. The petitioners in response to the protest contend that the issues raised by the protestor are Res judicata.
13. In their written submissions dated 5/1/2026 done through learned counsel M/s Teti & Co Advocate, the 1<sup>st</sup> and 2<sup>nd</sup> petitioners contend that the protest filed is Res judicata. They point out that the claim is based on the allegation that protestor's late father, George Wekanga purchased 23 acres in Land Parcel No.8996.
14. The petitioners assert that this allegation is exactly the same claim which was the subject of affidavit of **"interested person"** dated 18/3/2019 vide summons for revocation of grant dated 18/11/2019.
15. They submit that Justice A.C Mrima vide his ruling delivered on 12/7/2023 exhaustively dealt with the claims by finding that the ownership dispute was settled in Eldoret Civil Case No.39 of 1984 where the court allocated 2 acres only to George Wekanga's family on humanitarian grounds. That

- Justice Mrima found that the matter having been settled/resolved by a competent court was then Res judicata.
16. The petitioners further fault the protestor for filing protest without Locus Standi because he is neither a legal representative nor an administrator of the estate of George Wekanga.
  17. The petitioners submit that the protestor is trying to appeal the decision of Justice Mrima through the back door to foster mischief.
  18. The 3<sup>rd</sup> respondent concurs with the sentiments of the 1<sup>st</sup> and 2<sup>nd</sup> petitioners and asks this court to dismiss the protest.
  19. This court finds that for ease of determination of the issues at hand in this cause, it is advisable to first deal with the protest before dealing with the question of distribution.
  20. This court notes from the record that the protestor or rather the family of the late George Wekanga Munialo (deceased) has made various attempts to nullify or revoke the grant herein and the singular reason or basis for revocation is ownership claim of 23 acres comprised in L.R No.8996. The protestor claims that the late George Wekanga Munialo was the owner of the said 23 acres portion and that the deceased herein was not the exclusive owner as stated in this cause.
  21. The same issue was raised in the summons for revocation of grant dated 18/11/2019 and was also raised in

the summons for revocation of grant dated 25/1/2018. The same issue is now raised in the affidavit of protest by Joseph Lumbasi Wekanga (protestor) sworn on 20/6/2025. The latter two matters are now part of the subject for determination in this judgment.

22. It is quite apparent as correctly pointed out by the 3<sup>rd</sup> respondent's counsel that after the ruling of Justice A.C Mrima dated 12/7/2023 the applicant in summons for revocation of grant dated 25/1/2018 namely Benson Wekanga either lost interest in pursuing a lost cause or was well advised to abandon it albeit without formalizing the same.
23. From the face of the 2 applications that is summons for revocation of grant dated 18/11/2019 and 25/1/2018, the applicants all members of the family of the late George Wekanga Munialo, sought to have the grant issued to the administrators herein revoked on the grounds I have already alluded to above.
24. This court has gone through the decision or the ruling of Hon Justice Mrima dated 12/7/2023 and for the interest of judicial time, this court does not wish to regurgitate the findings of the good judge with respect to a similar case earlier filed vide Eldoret High Court Civil Case No.39 of 1984 where the court adopted an elders award giving the family of George Wekanga Munialo 2 acres of Parcel No.8996. Justice Mrima in his ruling upon comprehensive analysis of the facts

as presented and the doctrine of Res judicata found that the summons for revocation of grant dated 18/11/2019 was Res judicata since the question of ownership of the disputed parcel (read Parcel No.L.R 8996) had been determined with finality in Eldoret Civil Case No.39 of 1984 and no appeal was preferred.

25. This court finds that to the extent that the issues raised in the summons for revocation of grant dated 25/1/2018 by Benson Wekanga are similar to the issues raised by his brother Joseph Lumbasi Wekanga in the summons for revocation of grant dated 18/11/2019, this court is estopped by operation of section 7 of Civil Procedure Act (which encapsulates the doctrine of Res judicata) from further entertaining or determining the same issue which is whether or not the deceased exclusively owned L.R 8996 or he co-owned it with the late George Wekanga Munialo. Section 7 of Civil Procedure Act provides;

***“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court”.***

26. Similarly to the extent the protestor herein having raised similar issue in his application dated 18/11/2019 and

Justice Mrima having rendered himself vide Ruling dated 12/7/2023 this court finds that the protest filed herein is incompetent, bad in law and an abuse of court process because once an issue has been heard by a competent court and fully determined, the same issue cannot be re-litigated again because of the same operation of estopped or principle of Res Judicata as stipulated under section 7 of the Civil Procedure Act.

27. This court finds that the protestor herein instead of proceeding to the correct avenue of appeal to seek redress if he was aggrieved by the ruling of Hon Mrima J, has chosen the wrong option of filing application after application using his siblings. This court finds the conduct vexatious and inadvisable and though courts usually are reserved in awarding costs in probate matters, in this instance this court will not only dismiss the summons for revocation of grant dated 25/1/2018 and protest herein but will award costs to the respondents because of vexatiousness.

28. Having dealt with the protest, the next issue for determination is the question of distribution. This court has considered the proposed mode of distribution made by the 1<sup>st</sup> and 2<sup>nd</sup> petitioners on one hand and the 3<sup>rd</sup> petitioner on the other.

29. The administrators are in concurrence on what comprises the estates and the liabilities (or creditors). The assets are as follows;

- i) L.R No.8996- 201 acres**
- ii) L.R No.8995-26.5acres**
- iii) Commercial Plot at Matunda Trading Centre**

30. The creditors or liabilities are listed as follows;

- (a) 8 acres of L.R No.8995 to J.M Wafula (deceased).*
- (b) 60 acres of L.R 8996 to 1<sup>st</sup> and 2<sup>nd</sup> petitioners and 52 acres of same parcel according to 3<sup>rd</sup> petitioner to the late Maurice Leo Simiyu.*
- (c) 2 acres of L.R No.8996 to the family of George Wekanga Munialo.*
- (d) 2 acres of parcel NO.8996 to the family of late Daniel Maikuma Makona*
- (e) 1 acre to Nyongesa Makona*
- (f) 0.25 acres to ACK Church*

31. The petitioners concur that the above were parcels sold by deceased himself or gifts inter vivos and therefore should be respected and factored in the distribution.

32. According to the 1<sup>st</sup> and 2<sup>nd</sup> petitioners the net estate after factoring in the above is as follows;

**(a) L.R 8996 - 135.75acres**

**(b) L.R 8995- 18.5acres**

**154.23acres**

33. The 3<sup>rd</sup> petitioner calculates the net estate after factoring the above to be approximately 160 acres.

34. The two sides have also given differing opinions on how the estate should be distributed with the 1<sup>st</sup> and 2<sup>nd</sup> petitioners suggesting that the distribution be done according to the houses while the 3<sup>rd</sup> petitioner prefers that

distribution be done according to the houses but also factor in the number of children.

35. The applicable provision in the distribution of an estate of a deceased person who was polygamous is provided under section 40 of Law of Succession Act. The section provides;

***“(1) Where an intestate has married more than once under any system of law permitting polygamy, his personal and household effects and the residue of the net intestate estate 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 estate within each house shall then be in accordance with the rules set out in sections 35 to 38.”***

36. There is no dispute that the 3 houses listed in the petition are as follows;

**A. 1<sup>st</sup> house**

Teresia Naliaka Stock 8 in number inclusive of the widow.

**B. 2<sup>nd</sup> house**

Rose Naswa Reuben – 6 in number inclusive of the widow.

**C. 3<sup>rd</sup> house**

Margaret Oolu Sitoko - 15 in umber inclusive of the 3<sup>rd</sup> widow.

The total number of units or beneficiaries are 29 inclusive of the 3 widows. The above provision means the proposal by the 3<sup>rd</sup> petitioner is anchored in law. This means that the estate of the deceased will be distributed as follows;

A. **L.R NO.8996**

i) **Teresia Naliaka Stock**

44 Acres to hold for her own benefit and in trust of members of 1<sup>st</sup> house described in paragraph 9 in affidavit in support of confirmation of grant sworn on 16/1/2018.

(ii) **Rose Naswa Reuben**

33 Acres for her own benefit and in trust of members of 2<sup>nd</sup> house as listed in paragraph 9 in the affidavit in support of confirmation of grant dated 16/1/2018.

(iii) **Margaret Oolu Sitoko**

63 acres for her own benefit and in trust of members of 3<sup>rd</sup> house as listed in paragraph 9 in the affidavit in support of confirmation of grant sworn on 16/1/2018.

(iv) The estate of Maurice Leo Simiyu approximately 52 acres -Area occupied by the family of Simiyu to be confirmed by surveyor.

(v) 2 acres to the family of George Wekanga Munialo.

(vi) 2 acres to the family of Daniel Maikuma Makona

(vii) 1 acre to Nyongesa Makona.

(viii) 0.25acre to ACK Church.

**B. L.R NO.8995**

18.5 acres to Margaret Oolu Sitoko for her own benefit and in trust of her children as listed in paragraph 9 of the affidavit in support.

**(C) Commercial Plot at Matunda**

To be valued and sold and proceeds to be shared equally among the 3 widows who shall be at liberty to share the same with their children or utilize them for their upkeep.

I will direct the surveyor to visit the estate and come up with actual measurements and distribution of the estate. In the event of less acreage or more depending on the ground measurements to be ascertained, the creditors will be given their share and the balance be shared as per the certificate of confirmation upon factoring easements/access roads. The survey to also factor in where each beneficiary or creditor lives to ensure minimal disturbance/displacements as much as possible. Costs of the surveyor to be paid by the 3 houses equally. The protestor to pay costs of the protest for reasons aforesated.

**DELIVERED, DATED and SIGNED at KITALE this .....19<sup>th</sup> .... day of  
.....FEBRUARY....., 2026.**

**HON JUSTICE R.K. LIMO  
KITALE HIGH COURT**

**Judgment delivered in open court**

**In the presence of**

**Nandi for protestor**

**Teti for the petitioner**

**Jeremiah Makona**

**Joseph Lumbasi**

**Chemosop/Joseph- Court assistants**