



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ISIOLO
FAMILY APPEAL NO. E005 OF 2024

**JOSEPH MWENDA
NAIVASHAAPPELLANT**

VERSUS

**HENRY NAIVASHA
GITONGARESPONDENT**

**CHRISTINE GAKII1ST
INTERESTED PARTY**

**MICHAEL MURIUNGI2ND
INTERESTED PARTY**

**EVANS KIMATHI3RD
INTERESTED PARTY**

RULING

1. The Appeal herein arises from the Judgment of the trial Court dated 15/05/2024 in which directed the distribution of the Assets of the Estate of M'Naivasha M'Mathiu (deceased). The beneficiaries are children of the deceased.
2. The gist of the Appeal is that the distribution offended the provisions of **Section 38 of the Law of Succession Act** (The Act).
3. The contest involves 4 properties described as Title No. Nyaki/Munithu/950, Ntima/Igoki/1803, Plot No. 3A at Gakoromone and Plot No. 1003 at Isiolo Town.

4. I have perused the record and observed the following: -
- a) Some of the properties are developed with Residential and Commercial buildings; However, the values of the property were not ascertained. The value of the property is significant as it informs the fair and just sharing ratios.
 - b) Some witnesses alleged that some of the properties were co-owned by the deceased and other 3rd parties. While documents of title have been availed, some have not. It is not possible for the Court to ascertain whether the properties were wholly owned by the deceased.
 - c) There is reference to plot No. 7918/13 at Isiolo Town. It is unclear whether it is the same plot otherwise referred to as plot No. 1003, Isiolo Town.
5. An Appeal to this Court is by way of a retrial (see ***Gatibu Imanyara and 2 Others vs A.G [2016]eKLR***, and the main issue in this case is the distribution of the Assets of a deceased person. The Court is not in a position to ascertain whether the distribution by the trial court met the requirements of section 38 of the Act, or make and / or arrive at its own independent decision , unless the uncertainties pointed out above are dealt with.
6. Under the provision to ***Section 71(2)*** the Act a Court may postpone the distribution until it is satisfied as to ***interalia*** , the respective identifies and shares of all persons beneficially entitled have been clearly shown.
7. In view of the foregoing this Court defers the subject Judgment and directs the Administrators as follows:
- a). Carry out valuations of:-

- i. Title No. Nyaki/Munithu/950
 - ii. Title No. Ntima/Igoki/1803
 - iii. Plot No. 31 A-Gakoromone
 - iv. Plot No. 1003 -Isiolo Town
- b). Avail documents of Title in respect of each of the aforementioned properties.
- c). Ascertain the status of Plot No. 7918/13, and its relationship to Plot No. 1003, if any, and to further provide supportive documents in this regard.
- d). State if any of the deceased properties are co-owned by third parties and, if such third-party interests have been divested, to provide evidence in support.
- e). This matter will be given a mention a date to be given during the delivery of this Ruling, for purposes of confirming compliance of the aforementioned orders.

Dated, Signed and delivered at Isiolo, this 26th day of February, 2026

S. Chirchir
Judge

In the presence of:-
Ismail-Court Assistant
Mr. Kirimi - for the interested parties