

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO.38 OF 2022

**IN THE MATTER OF THE ESTATE OF REUBEN WANYAMA
MUKABURU- DECEASED**

ANNAH NABUKWANGWA WANYAMA---1ST

PETITIONER/RESPONDENT

REBECCA NAFULA WANYAMA-----2ND

PETITIONER/RESPONDENT

VERSUS

MUSA SIMIYU WANYAMA-----1ST

OBJECTOR/APPLICANT

RULING

1. This cause relates to the estate of the late Reuben Wanyama Mukaburu who died intestate on 7/1/2001 leaving behind 10 dependants surviving him namely;

(i) Musa Simiyu Wanyama

(ii) Samuel Wanyonyi

(iii) Gedion Wafula

(iv) Jacob Nyongesa

(v) Annah Nabukwanga

(vi) Damara Nasike

(vii) Leah Nasimiyu

(viii) Naomi Nangekhe

(ix) Rebecca Wafula

(x) Isaya Weke Wanyama (deceased)

2. Annah Nabukwangwa Wanyama and Rebecca Nafula Wanyama were appointed administratrixes of the estate vide a grant issued dated 20/1/2023.

3. Musa Simiyu Wanyama, Samuel Wanyonyi Wanyama, Gedion Wafula Wanyama and Jacob Nyongesa Wanyama later applied to have grant revoked. The court prevailed upon the parties to agree and appoint 2 administrators from the daughters and 2 from the sons and the family agreed on Musa Simiyu Wanyama and Samuel Wanyonyi to be included as co-administrators. The court then appointed the two sons to join the 2 sisters earlier appointed as the administrators. The court gave them opportunity to make written submissions on the proposed mode of distribution preferred by both sides.

4. The record shows that Hon Justice A.C Mrima vide a judgment dated 11/4/2024 delivered judgment and distributed the estate as follows;

That parcel of land known as Sinyerere/Kipsaina Block 1 BISATI/42 to devolve upon the following dependants a follows;

(i) Musa Simiyu Wanyama - 1acre

(ii) Samuel Wanyonyi Wanyama -1acre

(iii) Gedion Wafula Wanyama -1acre

- (iv) *Jacob Nyongesa Wanyama* -1acre
 - (v) *Gedion Nyongesa Wanyama* -1acre
 - (vi) *Annah Nabukwanga Wanyama*-1acre
 - (vii) *Rebecca Nafula Wanyama* -1acre
 - (viii) *Damara Nasike* -1acre
 - (ix) *Leah Nasimiyu* -1acre
 - (x) *Naomi Nangekhe* -1acre
 - (xi) *Isaya Wekesa Wanyama* -2acres
 - (xii) *Annah Nabukwanga Wanyama*-1.5acres
- (To hold in trust for purchasers)*

5. The beneficiaries from the two sides that is the daughters on one side and sons on the other have now preferred different applications dated 27/1/2025 from the sons on one hand and another dated 17/2/2025 from the daughters on the other side.

6. The sons namely;

- (i) *Musa Simiyu Wanyama*
- (ii) *Samuel Wanyonyi Wanyama*
- (iii) *Gedion Wafula Wanyama*
- (iv) *Jacob Nyongesa Wanyama*

Through summons dated 27/1/2025 moved this court for the following orders namely;

- (i) That the respondents do furnish the court with the following;**
 - (a) The actual acreage of the land parcel No.Sinyerere/Kipsaina Block 1 Bistati/42.**

(b) Disclosure of overriding interests on the said land in terms of public roads and way leave for high voltage power lines.

(c) Existence of settlement of beneficiary on the estate and effect on the implementation of the certificate of confirmation.

(ii) That the grant issued on 20/1/2023 and confirmed on 11/4/2024 be revoked.

(iii) Any order deemed fit and just to grant.

7. The petitioners (the daughters) on the other hand vide summons dated 17/2/2025 have moved this court for rectification of grant ostensibly to correct the acreage of each beneficiary to align with the actual acreage on the ground because they claim that the parcel comprising the estate measures 11.34 acres and not 12.5 acres that was distributed by this court.

8. This court gave directions that the 2 applications be canvassed simultaneously through written submissions as the 2 applications are inter related. This court will consider both applications conjunctively and will begin with the former application dated 27/1/2025.

9. The applicants in their application dated 27/1/2-025 have listed the following grounds for the prayers sought namely;

(a) That the objection raised should have been canvassed through viva voce evidence as noted in paragraph 21 of the judgment of Hon Justice A.C Mrima.

(b) That the actual acreage on the ground is 7.43 acres and not 12.5 acres reflected in the certificate of confirmation.

- (c) That 0.23 acres was taken away by way leave to Kenya Power.*
 - (d) That 0.29 acres was taken away by access roads.*
 - (e) That Kapenguria-Kitale Highway passes through the parcel and it is not known how much of the estate will go to road reserve.*
 - (f) That there is another tarmac road through the same parcel which takes away some portion of the estate.*
 - (g) That public utilities in total takes away about 3.2484 acres from the estate.*
 - (h) That the above issues were brought to the attention of court through written submissions without affidavits.*
 - (i) That information regarding settlement of Isaya Wekesa Wanyama by the deceased on 2.1 acres was not availed.*
 - (j) That the surveyor accompanied by police carried out subdivision using a ratio that left barely anything to the objectors.*
 - (k) That it is fair that the petitioners do render full and accurate account of how the distribution was implemented on the ground.*
10. The application is supported by affidavit sworn on 27/1/2025 by Musa Simiyu Wanyama who depones that he is authorized by the other applicants to swear the said affidavit.
11. He avers that as per the official search, the parcel comprising the estate measures 4.85ha or 11.999 acres.
12. That their late father had settled Isaya Wekesa Wanyama on 2 acres and that all the members of family are agreed on this.

13. That the respondents/petitioners in their application for confirmation of grant had rooted for equal distribution of the estate.
14. That it was their wish to have their objection proceed by way of viva voce evidence so that they could provide evidence to court during trial.
15. That the judge noted in paragraph 20 and made the same sentiments and averments that they did not agree to have the objection disposed or canvassed by way of written submissions.
16. He avers that they would have brought evidence demonstrating that public utilities had taken away approximately 3.24 acres from the estate.
17. He avers that the respondents in the company of police officers from Kipsaina police post on 1/10/2024 went to the estate and proceeded with subdivision without the input from the applicants.
18. That the respondents proceeded and demolished everything to achieve distribution as per the certificate of confirmation.
19. In their written submissions through learned counsel M/s D.M. Wanyama & Co Advocates dated 8/10/2024 the applicants reiterate the above grounds adding that the distribution should not displace beneficiaries from where they were occupying and that the judge in his judgment flagged evidentiary deficiency which in their view can be

cured by revocation of grant so that parties can tender evidence to assist the court distribute the estate fairly.

20. They contend that the implementation of the certificate of confirmation has prejudiced them adding that a neutral accounting will ensure fairness factoring in public utility and long-standing occupation of beneficiaries on various parts of the estate.
21. They contend that their application for revocation of grant has demonstrated non-disclosure/misrepresentation of material facts that distribution proceeded as though the actual acreage on the ground reflected what is contained in the certificate of confirmation.
22. They fault the petitioners/respondents for proceeding without proper account in face of disputes on acreage, encumbrances and occupation.
23. They submit that implementation of the grant without proper mapping to avoid displacement makes the grant incurable and inequitable. They seek this court's intervention through invocation of the provisions of section 76 of Law of Succession Act.
24. The respondents have opposed the application dated 27/1/2025 through grounds of objection dated 11/2/2025. Their main ground is that this court rendered itself and is now functus officio.
25. They contend that the application is an afterthought, bad in law and without basis.

26. This court has considered the grounds raised by the applicants and finds that the petitioners/respondents have conceded one undisputed fact which is the fact that the ground acreage measures less than what is reflected on the certificate of confirmation and the certificate of official search exhibited by the applicants.
27. This court finds that the petitioners in their summons for rectification of grant dated 17/2/2025 clearly concede that the acreage on the ground is less compared with the certificate of confirmation. This court has gone through the surveyor's report dated 30/1/2025 and the surveyor has observed that when he visited the ground or the parcel comprising the estate in this cause he found the total acreage on the ground to be 11.35 and not 12.5 acres. The surveyor gives the reason for differences to be the widening of road reserve on the Kitale-Kapenguria Road.
28. The surveyor in my considered view did a fair and equitable job by using the certificate of confirmation as the baseline for the ratio he used to carry out the subdivision. There is no beneficiary who has faulted the ratio used to come up with the subdivision indicated in the application dated 17/2/2025.
29. This court finds that the objectors/applicants in the application dated 27/1/2025 have not demonstrated sufficient grounds to invoke the provisions of section 76 of Law of Succession Act.

30. The ground that Justice Mrima noted some deficiency in the evidence tendered through submissions in my view is now water under the bridge. The judge rendered himself based on the evidence placed before him and if any party felt aggrieved, then the avenue was to appeal or review. In any event the court distributed the estate equally save for the agreed share going to Isaya Wekesa and the purchasers. The surveyor in his report factored in the ratio he used to ensure that each beneficiary got an equitable share.
31. The objectors have not demonstrated that in carrying out the subdivision, the surveyor disregarded where they had put up their respective houses. The petitioners took the surveyor under security provided by the police and the same was in compliance of the judgment of Justice Mrima.
32. This court finds no merit on the issues raised by the objectors/applicants. This court finds that the issues raised may not have made much difference on the direction the good judge took in his judgment.

In the premises this court finds no merit in the application dated 27/1/2025. The same is disallowed. At the same time the application dated 17/2/2025 is merited as it is meant to align the certificate of confirmation made on 31/7/2024 with the actual acreage on the ground. The applicants have also given sufficient grounds indicative that the objectors have just been difficult and uncooperative in actualizing the finalization of the distribution of the estate as per the judgment of this court. In the premises this

court finds that the ends of justice will be met in allowing the application dated 17/2/2025 which I hereby do as prayed. I make no order as to costs in both applications.

DELIVERED, DATED and SIGNED at KITALE this27th day ofAPRIL....., 2026.

HON JUSTICE R.K. LIMO
KITALE HIGH COURT

Ruling delivered in open court

In the presence of

Bikundo holding brief for Wanyama for objectors

No appearance for Mukabane for the petitioners

Duke/Chemosop - Court Assistants