



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Succession Cause 28 of 2001**

**IN THE MATTER OF THE ESTATE OF SAMWEL ANABAKA SHATI ... DECEASED**

**BEATRICE NALIAKA SITATI ..... 1<sup>ST</sup> PETITIONER**

**BEATRICE NEKESA KHAEMBA ..... 2<sup>ND</sup> PETITIONER**

**V E R S U S**

**ANDREW OYALO SHATI ..... 1<sup>ST</sup> OBEJECTOR**

**NICHOLAS SHATI ..... 2<sup>ND</sup> OBJECTOR**

**R U L I N G**

The deceased in this case, **SAMUEL ANABAKA SHATI** died on 24<sup>th</sup> July 1982. His two daughters from the 2<sup>nd</sup> wife namely **BEATRICE NALIAKA SITATI** and **BEATRICE NEKESA KHAEMBA** petitioned the court for letters of administration intestate. The objectors, Andrew Oyalo Shati and Nicholas Shati are the deceased's grandchildren. They are the sons of Adriano Shati who was from the first wife. They filed a cross petition and sought to be made the administrators of the deceased's estate. On 7<sup>th</sup> July 2001, the objectors filed an application seeking to have the grant issued to the petitioners revoked claiming that the petition was filed secretly. The court did revoke the grant on 15<sup>th</sup> November 2008. On 24.6.2010 parties agreed by consent to appoint both the petitioners and the objectors as joint administrators.

The main issue for determination is what constitutes the deceased's estate and how should the estate be distributed. Beatrice Naliaka's evidence is that his late father had four wives. Each of the wife had children as follows:-

**1<sup>st</sup> Wife - TERESA KHASUNGU**

- 1. ADRIANO SHATI - DECEASED**
- 2. JULIUS**
- 3. AGNES AMBOKO**
- 4. REBECCA OMWELWE**
- 5. TERESINA AMBOKA**

**2<sup>nd</sup> Wife - MAKAJO ASIRA**

- 1. BEATRICE NALIAKA**

2. **PELINA NEKESA (BEATRICE NEKESA)**

3. **MARGARET MTONGO**

3<sup>rd</sup> Wife - NELSA OMRONJO

1. **JOHN MARUNDA - DECEASED**

4<sup>th</sup> Wife - SHAKHUTSA SONGO

1. **SAMSON JAPHET**

2. **SAMUEL SEKANA**

3. **EPHALINA MAKONJO**

4. **ROSY OMWENJE**

5. **BRESIKA OKUTSA**

It is the evidence of Beatrice that his father had two plots. Plot number **BUTSOTSO/INGOTSE/2440** measuring 8 ½ acres was given to the first wife. The plot was registered in the name of the first wife and upon her death, it was registered in the names of Julius who was to share with his brothers and sisters. Plot number **BUTSOTSO/INGOTSE/419** measuring 11 ½ acres was for the three other houses. She would like to distribute the estate as follows:-

**SECOND HOUSE - 4 ACRES**

**THIRD HOUSE - 4 ACRES**

**FOURTH HOUSE - 3 ½ ACRES**

It is the 1<sup>st</sup> petitioner's evidence that the objectors are the children of Shati who should pursue their claim from Julius. Their father was from the 1<sup>st</sup> wife and their claim falls within the 8 ½ acres of plot number **2440**. Her father gave the 2<sup>nd</sup> house its share but the objectors removed the boundaries. The objectors were young in 1982 when the deceased died. The objectors have built their houses on the 11 ½ acre plot. When the deceased divided his land, one Okutoi Oyalo (PW2) was present.

**DANIEL OKUTOI OLAO** testified as PW2. His evidence is similar to that of Beatrice Naliaka. He testified that the deceased had distributed his land amongst his four wives. The first wife and her children was given her plot while the other three wives' shared one plot. The land was not distributed according to the children.

**ANDREW OYALO SHATI**, the 1<sup>st</sup> objector testified that the deceased was his grandfather. According to him, the deceased had only one plot being plot number 419 measuring 11 ½ acres. He divided his land amongst his sons. His father was given his land where the objector resides with his brother the 2<sup>nd</sup> objector. His father is from the 1<sup>st</sup> wife. He would like to have the estate distributed as per the existing boundaries. It is the objector's position that the deceased did not give the petitioners any land as they were married at the time of distribution. The land was given to five sons only namely **ADRIANO SHAT, JULIUS ANAVAKA, JOHN MARUNDA, SAMSON ANAVAKA** and **JAMES ISIEKONA**. Only Julius is alive and the other four sons are deceased. The petitioners' house has no son.

**DW2, KARAKACHA AFUBWA** testified that the deceased was his neighbour. The objectors are the deceased's grandchildren. The deceased had only one plot, number 419 and he called a land officer by the name **MATSANGANJIRA** to divide his land to his children. DW2 was present and this was around 1968/1969. The deceased remained with one portion meant for Samson and Kisekano who were still young. In 1996 the two called the village elder to distribute the land. The surveyor did not put beacons but boundaries separating the plots were planted.



the court and seek a share of his/her parent's estate.

Having found that the petitioners are entitled to a share of the deceased's estate, the next issue is how the estate should be distributed. The surveyor's report shows that four people reside on the land. It is not clear whether **JULIUS HARAMBEE MARUNDA** and **JAMES ANAVAKA** are brothers or whether they are from one house. The objectors herein are from the same father and derive their share from their father. The two jointly occupy 4.50 acres while the other two people occupy 6.4 acres. I will reduce the share of the objectors by one acre and similarly reduce the share of the other occupants by one. The petitioners herein are allocated 2.0 acres of land.

In the end, the application by the objectors seeking to be appointed as administrators of the deceased's estate dated 26.5.2010 is dismissed. The grant issued to the petitioners on 21<sup>st</sup> May 2001 is hereby confirmed. The deceased's estate comprising plot number **BUTSOTSO/INGOTSE/419** shall be distributed as follows:

**BUTSOTSO/INGOTSE/419**

1. (a) **BEATRICE NALIAKA**  

<b>(b) BELINA NEKSA</b>	<b>2.0 ACRES</b>
<b>(c) MARGARET MTONGO</b>	
  
2. (a) **JULIUS HARAMBEE MARUNDA**    **5.40 ACRES**  
**(b) JAMES ANAVAKA SHISEKANE**
  
3. (a) **NICHOLAS SHATI** .....    **1.70 ACRES**  
**(b) ANDREA SHATI** .....    **1.80 ACRES**

The petitioner shall be issued with a confirmed grant as herein above. Each party to meet his/her own costs.

***Delivered, dated and signed at Kakamega this 27<sup>th</sup> day of February, 2013***

**SAID J. CHITEMBWE**  
**J U D G E**