



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**FAMILY DIVISION**  
**SUCCESSION CAUSE NO. 718 OF 2012**  
**IN THE MATTER OF THE ESTATE OF DORCAS WAIRIMU RIITHO (DECEASED)**  
  
JEANNE WATETU KIMANI..... APPLICANT  
  
VERSUS  
  
CHARLES MUGO RIITHO.....RESPONDENT

**RULING**

1. The deceased Dorcas Wairimu Riitho died on 19<sup>th</sup> December 2009. She was survived by her widower Charles Mugo Riitho (the respondent) and four children: - Kenneth Anthony Riitho, the applicant Jeanne Watetu Kimani, Nicholas Gakuya Riitho and Irene Wanja Riitho. On 26<sup>th</sup> September 2014 the grant of letters of administration that was issued to the respondent and the applicant was confirmed. A certificate of confirmation was issued in which the estate had been shared to the beneficiaries. The respondent got a life interest in all the immovable properties. The shares in companies, the money in the various companies and the motor vehicle were ordered to be shared equally among the four children of the deceased. A rectified certificate of confirmation was issued on 9<sup>th</sup> March 2016.
2. One of the immovable properties in respect of which the respondent got a life interest was Mavoko Plot LR No. 12715/1666. In the application dated 20<sup>th</sup> January 2021 the applicant requested the court to give consent to the sale of this property so that the proceeds can be shared among the five beneficiaries. The property measures 0.1 Ha and was valued at Kshs.10,000,000/= on 26<sup>th</sup> January 2018. Her case was that all the beneficiaries had consented to the sale. The application was brought under **sections 37, 47, 83(f) and 83(h)** of the **Law of Succession Act** and **rules 25(5), 49, 59(1), (2), (5), 61(1), 62(1)** and 73 of the **Probate and Administration Rules**.
3. The replying affidavit by the respondent shows that there was a time he had consented to the sale but he has since changed his mind. He stated that he changed his mind because the applicant had unilaterally sourced for a buyer without disclosing the proposed purchase price or how she proposed to share the proceeds. She had been written to but had not provided the information. The applicant swore a further affidavit to deny that she had been unilateral in her decisions. She stated that she had provided all the information required.
4. Irene Wanja Riitho swore a replying affidavit on her behalf and on behalf of Nicholas Gakuya Riitho. She stated that they had not consented to the proposed sale as there were many unresolved issues related to the transaction. On 3<sup>rd</sup> November 2021 Mr. Macharia, acting for Irene Wanja Riitho and Nicholas Gakuya Riitho, informed the court that they had no problems with the proposed sale provided all the parties were on board.
5. The applicant filed written submissions to support her bid to have the property sold. Mr. Omulama filed written submissions on behalf of Charles Mugo Riitho. The proposed sale was opposed.
6. This estate was distributed under **section 35(1)** of the **Act**. The respondent is the deceased's widower. He has a life interest over the property in question. It means that, as long as he lives he has exclusive rights over the property. It is only when he eventually passes on that the deceased's children's rights can begin to actualize. His rights over the property will pass over to the children, including the applicant. As of now, the children of the deceased have no claim or right to the property that they can seek to pass on by sale or otherwise. The applicant cannot begin to transact or negotiate a transaction over this property. This is because it is not hers, at least not for now.
7. **Section 37** of the **Act** provides that:-

**“A surviving spouse entitled to a life interest under the provisions of section 35 or 36 of this Act, with the consent of all co-trustees and all children of full age, or with the consent of the court shall, during the period of the life interest, sell any of the property subject to that interest if it is necessary for his own maintenance:**

**Provided that, in the case of immovable property, the exercise of that power shall always be subject to the consent of the court.”**

8. This means that the respondent can, with the consent of the four children of the deceased, sell this property over which he has a life interest, but the consent of the court has to be obtained. The sell would be intended to get money for his own maintenance. There is no indication that he is seeking to be maintained. Neither are the children seeking to be maintained.

9. The court’s consent is required because the life interest conferred on the respondent has created a trust over the property in favour of the children of the deceased (**In Re Estate of Jolly Jimmy Githieya [2013]eKLR**). During his life, he cannot deal with the property as if it belongs to him. He cannot sell it. Once again, the property is held in trust by him and him alone. It does not belong to the applicant until he dies. That is when his rights over the property will get extinguished, and that is when the claim by the children will be activated. That is when the rights of the children over the property will crystallise.

10. The court, in any case, cannot give consent to the sale if the respondent has not sought to sell. The request to sell can only come from the owner of the parcel, as it were.

11. In conclusion, I find no merit in the application and dismiss it with costs.

**DATED and DELIVERED electronically at NAIROBI this 17<sup>TH</sup> day of JANUARY 2022.**

**A.O. MUCHELULE**

**JUDGE**