



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CAUSE NO. 252 OF 1978

IN THE MATTER OF THE ESTATE OF MWINYI MAKATA (DECEASED)

ZAITUNI MWINYI

MAIMUNA MWINYI MAKATA.....PETITIONERS/APPLICANTS

RULING

1. This application dated 17th December 2020 brought under **Section 82(a) and (b) (i) (ii) of the Law of Succession Act** seeks for orders of authorization of the sale of plots L.R. NYERI MUNICIPALITY PLOT K3 MAJENGO and NYERI MUNICIPALITY BLOCK 2/11 which form part of the estate of the deceased.

2. The application is unopposed.

The Applicants' Case

3. It is the applicants' case that they are the only surviving dependants of the deceased's estate. They state that they have administered the deceased's estate save from LR NYERI/MUNICIPALITY PLOT K3 MAJENGO and NYERI/MUNICIPALITY BLOCK 2/11 which have rental houses and a residential house respectively. Currently Ms Wanjiku occupies Plot K3 Majengo but she does not pay rent making it impossible for the applicants to account for the proceeds from the said asset.

4. The applicants contend that they ought to sell the suit properties and share the proceeds amongst the rightful beneficiaries as the dependants share has exponentially multiplied making it difficult to individually allocate their shares every month. Further, the applicants are apprehensive that the situation may get out of hand as some beneficiaries are dissatisfied and they make complicate the issue thus cause unnecessary tension within the family. As such, the applicants apply to this court to give them authority to sell the properties to enable them extinguish their mandate as administrators.

Issues for determination

5. After careful analysis, the issue for determination is whether the application dated 17th December 2020 is merited and thus worth of the grant of the reliefs sought.

The Law

6. **Section 82 of the Law of Succession Act** imposes certain duties on the personal representatives. It provides:-

Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers-

a) To enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative;

b) To sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:

Provided that-

i. Any purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased;

ii. No immovable property shall be sold before confirmation of the grant

7. I have perused the court record and note that a petition for letters of administration was filed by Akida Makata on 26th August 1978. The petitioner died on 8th December 1988 and his brother Mr. Yusuf Jumbe Mwinyi filed an application for substitution vide application dated 4th January 1989. This application was allowed by the court on 2nd May 1989 thus substituting Mr. Akida Makata with Mr. Yusuf Jumbe Mwinyi as the administrator of the estate herein. I have also noted that the estate was distributed vide the Kadhi's award dated 8/10/1986 and the award was entered into judgment by the court on 8/11/1990. On further perusing the record, I note that no application has been made by the applicants herein to substitute the administrator, Mr. Yusuf Jumbe Mwinyi. The applicants have deposed that they are the only remaining dependants of the deceased. Although, Section 82 of the Act confers the legal representatives with authority to sell immovable property after the confirmation of the grant, the applicants have not complied with the law by applying to be appointed administrators of the deceased's estate by way of substitution. The applicants are beneficiaries of the estate but are yet to acquire the legal authority to administer the estate. I rely on the case of Virginia Mwari Thurania vs Purity Nkirete Thurania [2017] eKLR where the court observed that:-

“The said sale agreement is null and void for violating Section 82(b)(ii) of the Law of Succession Act, as the said Julia Thurania had not obtained letters of Administration of the estate of the deceased at the time of the alleged sale. The property of a deceased person vests in the legal representatives and constitutes the estate of the deceased person. It is only the legal representatives of the estate or a person under the authority of the written law shall have authority to deal with the estate of the deceased, but in accordance with the grant or authority of written law or order of the court.”

Conclusion

8. Having found that the applicants lack the *locus standi* to bring this application, I hereby declare it incompetent and strike it out accordingly.

9. There shall be no order as to costs.

10. It is hereby so ordered.

DELIVERED, DATED AND SIGNED AT NYERI THIS 24TH DAY OF FEBRUARY, 2022.

F. MUCHEMI

JUDGE

RULING DELIVERED THROUGH VIDEOLINK THIS 24TH DAY OF FEBRUARY, 2022