



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 718 "A" OF 2012**

**IN THE MATTER OF THE ESTATE OF DORCAS WAIRIMU RIITHO (DECEASED)**

**JEANNE WATETU KIMANI.....APPLICANT/PERSONAL REPRESENTATIVE**

**KENNETH ANTHONY RIITHO.....APPLICANT/PERSONAL REPRESENTATIVE**

**VERSUS**

**NICHOLAS GAKUYA RIITHO.....RESPONDENT/PERSONAL REPRESENTATIVE**

**IRENE WANJA RIITHO.....RESPONDENT/PERSONAL REPRESENTATIVE**

**RULING**

1. Before this Court for is the summons dated **14<sup>th</sup> January 2021** in which **JEANNE WATETU KIMANI** (the 1<sup>ST</sup> Applicant) and **KENNETH ANTHONY RIITHO** (the 2<sup>nd</sup> Applicant) seek the following orders:-

**“1. Spent.**

**2. THAT the court be pleased to give an order that administration of the estate herein, be completed within 90 days through sale of property known as Plot No. 15003/25 Garden Estate to facilitate its distribution equally amongst all the beneficiaries named in the confirmation of the grant issued herein;**

**3. THAT the court be pleased to give an order that an independent valuer be appointed immediately to value the property known as Plot No. 15003/25 Garden Estate and upon issuance of their report, the suit property be put on the market within 7 days and sold to the highest bidder within 90 days thereof and the proceeds of sale distributed amongst the beneficiaries named in the confirmation of grant issued herein;**

**4. THAT the court be pleased to give an order that the Deputy Registrar of the High Court – Family Division shall sign any sale and/or transfer document in respect to the plot known as Plot No. 15003/25 Garden Estate in place of any personal representative who will fail to do so within 7 days of dispatch or presentation of such documents to them via email or any other form of written communication;**

**5. THAT the costs of this application be in the cause.”**

2. The summons was premised upon section **47, 83(f), and 83 (g)** of the **Laws of Succession Act and Rules 25 (5), 49, 59(1) (2) (5),(6) Rule 73 of the Probate and Administration Rules** and was supported by the Affidavit of even date and the supplementary Affidavit dated **17<sup>th</sup> August 2021** sworn by the 1<sup>st</sup> Applicant.

3. The 1<sup>st</sup> Respondent **NICHOLAS GAKUYU RIITHO** and the 2<sup>nd</sup> Respondent **IRENE WANJA RIITHO** opposed the summons through the Replying Affidavits dated **3<sup>rd</sup> August 2021** sworn by the 2<sup>nd</sup> Respondent. The summons was canvassed by way of written submissions. The Applicants filed the written submissions dated **17<sup>th</sup> August 2021** whilst the Respondent relied upon their submissions dated **28<sup>th</sup> September 2021**.

**BACKGROUND**

4. This matter relates to the estate of one **DORCAS WAIRIMU RIITHO** (hereinafter ‘the **Deceased**’) who died at the **Kenyatta National Hospital** on **19<sup>th</sup> December 2009**. A copy of her Death Certificate Serial No. **121334** is in the file. Following the demise of the Deceased, the Widower, one **CHARLES MUGO RIITHO** on **12<sup>th</sup> April 2012** petitioned for letters of Administration Intestate. On **8<sup>th</sup> August 2012** the **four** children of the Deceased filed an objection to the making of the Grant sought by the Petitioner. The objectors averred that the Deceased had died Testate having left behind a written will dated **10<sup>th</sup> February 1998**.

5. The objection was heard by **Hon Justice William Musyoka** who in a judgment delivered on **12<sup>th</sup> July 2013** held that the document dated **10<sup>th</sup> February 1998** was a valid testamentary instrument. Accordingly a Grant of Probate with written Will dated **12<sup>th</sup> July 2013** was issued to the four children of the Deceased namely, **Kenneth Anthony Riitho, Jeanne Watetu Riitho, Nicholas Gakuya Riitho and Irene Wanja Riitho**. The Grant was thereafter confirmed on **30<sup>th</sup> April 2014**. The estate was to be distributed in accordance with the Will of the Deceased **dated 10<sup>th</sup> day of February 1998** (except for **Clause (c)** which was not available for distribution). Therefore, the Applicants and the Respondents herein are **all** the children of the Deceased and are the Administrators and beneficiaries of her estate.

6. One of the properties left behind by the Deceased was **Plot No. 15003/25 Garden Estate** (hereinafter the ‘**suit property**’) which property comprised of land measuring **0.382 Hectare** together with a dwelling house and improvements thereon.

7. Due to zoning regulations by the **Nairobi County Government**, which only permits **one (1)** dwelling house per **0.2 hectares**, the suit property could not be subdivided and shared amongst the beneficiaries. As a result to date the said property remains undistributed.

8. The Applicants aver that the said property has been valued **four (4)** times with a view to selling it but due to a dispute between the Applicants and the Respondents regarding the value of said property it has not been sold to date. That the Respondents oppose the sale of the suit property and have indicated their intention to ‘**buy out**’ the Applicants share of the suit property but to date the Respondents have not been able to raise the money required to buy out the Applicants.

9. The Applicants by this summons now pray that the court appoint an independent valuer since it has been over **two (2)** years since the last valuation was conducted and the property is likely to have appreciated in value. That thereafter the suit property should be sold to the highest bidder and the proceeds of sale be distributed equally amongst all the beneficiaries named in the Will.

10. Vide the Replying Affidavit dated **3<sup>rd</sup> August 2021** the Respondents assert that they have always been ready and willing to have the estate distributed but insist that the beneficiaries should obtain the best price and commercial benefits of the suit property. The Respondent submit that there has been no accurate valuation of the suit property and express apprehension that if the property is disposed of in a hasty manner then the beneficiaries stand to be prejudiced as they may not realize the true commercial value of the suit property. The Respondents pray that they be afforded the opportunity to market the suit property in order to obtain the best value for the same to the benefit of all the beneficiaries. They urge the court to dismiss the summons.

#### **ANYALSIS AND DETERMINATION**

11. I have considered this summons, the Affidavit in reply as well as the submissions filed by both parties. The only issue arising is whether the prayer to have the suit property valued and sold ought to be granted.

12. It is manifest that the Applicants and the Respondent who are joint administrators of the estate of the Deceased are unable to agree on the value of the suit property. Several valuations have been conducted by different valuers. **Advent Valuers** instructed by the **1<sup>st</sup>** Applicant returned a valuation of **75 million**, **Bel Air Properties** appointed by the **2<sup>nd</sup>** Applicant gave a value of **Kshs 40.5 million**. **Transnational Valuers & Estate Agents** instructed by the **1<sup>st</sup>** Respondent valued the property at **Kshs 55 million** and finally **Amazon Valuers** instructed by an external valuer returned a valuation of **Kshs 60 million**.

13. Clearly, there exists a wide disparity between the various valuations provided for the suit property.

14. I note that the Grant issued to the parties herein was confirmed on **26<sup>th</sup> September 2014** and the certificate of confirmation of Grant was thereafter rectified on **9<sup>th</sup> March 2016**. It is a matter of concern that **five (5) years** down the line the Administrators have been unable to distribute this asset.

15. It is a fact that property prices do fluctuate given the prevailing economic situation at any given time amongst other factors. In the circumstances, the ‘**true commercial valuer**’ of the suit property will be largely dependent on when the sale is taking place. The sale cannot be put on hold indefinitely until a price which meets with the approval of the respondents is negotiated. The parties have no option but to accept the best price at the particular time the property is put on the market.

16. In the interests of justice the finalization of this succession cause ought not be delayed any further. The beneficiaries are entitled to receive what is due to them and move on with their lives. Accordingly, I do allow the summons and I make the following orders: -

(1) A valuation of the suit property being **Plot No 15003/25 Garden Estate** together with the **Developments** thereon, be conducted within **90 days** of the date of this Ruling by a Valuer to be agreed upon by the parties.

(2) in the event that parties are unable to agree on a valuer within **40 days** then the **Hon Deputy Registrar** to appoint an independent valuer to conduct the valuation.

(3) The cost of the valuation exercise to be met by all **four (4)** Administrators on equal basis.

(4) After valuation the suit property to be put on the market and sold to the highest bidder.

(5) The proceeds of sale to be distributed equally between the **4** beneficiaries namely:-

**(i) Jeanne Watetu Kimani**

**(ii) Kenneth Anthony Riitho**

**(iii) Nicholas Gakuya Riitho**

**(iv) Irene Wanja Riitho**

17. This being a family matter each side to meet its own costs.

**DATED IN NAIROBI THIS 26TH DAY OF NOVEMBER 2021.**

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**MAUREEN A. ODERO**

**JUDGE**