



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO. 213 OF 1997**

**In the Matter of the Estate of PMR -Deceased**

**CGM.....APPLICANT**

**-VERSUS-**

**FKL.....PETITIONER/RESPONDENT**

**LKM.....RESPONDENT**

**EMM.....RESPONDENT**

**SMR.....RESPONDENT**

**RULING**

**Sale of estate property**

[1] The significant orders sought in the application dated 8<sup>th</sup> of March 2019 are: -

- i. An order that MERU MUNICIPALITY KIRUKURI BLOCK 11/\*\*\* be sold and proceeds thereof be shared amongst the beneficiaries entitled to the property; and
- ii. The property be registered in the names of the beneficiaries to facilitate sale.

[2] The application is expressed to be brought under section 47 of the Law of Succession Act, rules 49 and 73 of the Probate and Administration Rules. It is supported by the affidavit of CGM and grounds set out in the application. The argument presented is that the plot is a town plot producing monthly rent of about Kshs. 22,000. The said rent is shared out to the three beneficiaries as follows: (1) Kshs. 14,000 goes to the wife of the late SMM, one TM; (2) Kshs. 4000 to EM; and (3) Kshs. 4000 to CGM. Although the said T is getting the lion's share of the rent, she has refused to cooperate on the administration of the plot for the benefit of the beneficiaries. The rates for the plot are now in arrears and there is danger that the plot will be sold by the County Government for unpaid rates. She even paid a sum of Kshs. 57,806.85 for the years 2016 and 2017. According to the applicant, in the circumstances, the plot should be sold by the Trustee LM and share the proceeds thereof amongst the three beneficiaries identified and stated in the Certificate of Confirmation of Grant.

[3] The application was opposed by TM who stated that the property in issue was granted to his late husband and his late brother one FM in equal shares. But, because the said FM was deceased at the time of distribution, his shares were given to his wife to hold in trust for his two children, EM and CKM.

[4] Ms. M had earlier on given her consent to the application. But, when she realized that the court's interpretation of the distribution above was that the three were to share the plot in equal shares she withdrew her consent. She explained herself and I find her action to be of quite a diligent legal counsel. I then stayed my earlier orders of 30<sup>th</sup> September, 2020 to give her an opportunity to argue her client's case. She did not however file any submissions except she emphasized that the plot was shared to the two sons of the deceased and the two children took the share of their father, FM, deceased son of the deceased.

**Analysis**

[5] I have perused the judgment by Emukule J. dated 1<sup>st</sup> April 2009. It stated: -

**MERU MUNICIPLAITY KIRUKURI BLOCK II/\*\*\* (undeveloped prime double plot in Meru town)**

**1. To LKM in trust for**

(a) CGM

(b) EMM

and

SMR in equal shares.

[6] The Certificate of Confirmation of Grant dated 28<sup>th</sup> May, 2010 states: -

**MERU MUNICIPLAITY KIRUKURI BLOCK II/\*\*\* (undeveloped)**

**Lydia Kuri Murerwa in trust for;**

CGM ‘ ‘ )

EMM ‘ ‘ ) in equal shares

SMR ‘ ‘

[7] The one dated 21<sup>st</sup> July 2011 states: -

**MERU MUNICIPLAITY KIRUKURI BLOCK II/\*\*\* (UNDEVELOPED)**

**Lydia Kuri Murerwa in trust for;**

- CGM )
- EMM ) in equal shares
- SMR )

[8] These certificates in respect of this property do not state what the judge stated in his judgment. From the judgment, my view is that LKM was to hold in trust the share of C and E. These two are children of late FM, deceased son of the deceased. Ms. M’s argument also makes sense when I consider the numbering by the judge and the fact that the two minors were taking the share of their late father, FM. Given, these revelations which were not brought to the attention of the court, I review and set aside orders of 30<sup>th</sup> September, 2020 in respect of sale and interpretation on the sharing of the proceeds of sale of the property in question.

[9] However, as the question on how the said property should be shared is of great significance to parties herein and may affect their rights, I do not wish to determine it on revelations out of my industry; or, on the terse submissions by Ms. M. I also note that Mr. Riungu and Muthomi did not attach much significance to Ms. M’s point of view. They also considered their application to be straight-forward, and so they did not make any submissions. But, after perusing the file, I believe more serious discrepancies emerge; and the issue becomes pivotal and one that may affect the rights of the parties. From what I have stated, this is a matter that cannot be determined without giving the parties an opportunity to address the court on that issue before the application dated 8<sup>th</sup> March, 2020 is determined. I therefore, remit the file back to Meru for the judge who will preside over this matter to hear the parties on the issue I have pointed out above and determine the application dated 8<sup>th</sup> March, 2020. It is so ordered.

**Dated and signed at NAROK this 14<sup>th</sup> day December, 2020**

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**F. GIKONYO**

**JUDGE**

**Dated, signed and delivered at Meru this 16<sup>th</sup> day of December 2020**

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**T. W. CHERERE**

**JUDGE**