

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1045 OF 2013

IN THE MATTER OF THE ESTATE OF WILLIAM KIMUTAI MARTIN (DECEASED)

RULING

1. The summons dated 7th March 2016 is brought at the instance of Jasmine Martin. She seeks orders with respect to a property known as LR No. 209/2/292 Wilma Court Nairobi. She would like the Deputy Registrar for the Family Division ordered to execute transfer documents in respect of the said property in her favour and that of Ivana Cherotich Martin. She would also want orders that the Registrar of Titles be ordered to register the said duly executed transfer upon payment of the applicable charges by the applicant.

2. In her affidavit in support of the application, she avers that the deceased herein died testate on 29th February 2012 having made a will on 20th July 2011. Representation to his estate was obtained on 19th July 2013 and the grant confirmed on 10th June 2014. She complains that the respondent personal representatives have failed since then to cause the gift made to her transmitted to her name, yet they have had bequests in their favour transferred to their respective names.

3. The response to that application is in the replying affidavit of Kim Cheruiyot Martin, sworn on 4th February 2017. The reply raises two issues. Firstly, it is said that one of the executors of the will, Ian Kipkoech Martin, who was the husband of the applicant, died on 17th June 2015. He was one of the personal representatives to who representation had been granted on 19th July 2013. Upon his demise the other personal representatives had to move the court to have his name removed from the grant. This was done on 20th July 2016. The demise of the said executor is said to have stalled operations with regard to administration as no transfer or transmission could be undertaken while the name of a dead executor was still on the face of the grant. The other issue is that the property the subject of the gift, that is to say the flat located on LR No. 209/2/292 Wilma Court Nairobi, is actually standing on land belonging to a limited liability company. This would mean it belongs to the said company, said to be known as Sesaat Limited, owned by the deceased and his late wife. The executors indicate that they are in the process of sorting out the matters relating to the said company as between the two estates.

4. I have scrupulously perused through the will of 20th July 2011 and confirm that there was a gift of the subject property to the applicant, jointly with Ivana Cherotich Martin. That being the case there would be justification in the applicant agitating for transmission of the gift to her and the other beneficiary.

5. I have carefully considered the reasons given by the respondents to explain the delay in effecting the transmission. I am convinced that they are fairly genuine. The applicant's late husband was one of the executors of the subject will. His demise no doubt threw a spanner into the works and the process of removing his name from the grant must have caused inconveniences and delays. I do not think it would be fair to accuse the respondents of malice, noting that no proof has been provided that the executors had caused transfers of the gifts made to them while discriminating against the applicant.

6. Regarding the other reason, there is no proof that the property in question was registered in the name of a limited liability company. It behooved the executors to provide proof thereof, even though the applicant has not contested the allegation. If indeed the property is registered in the name of a company, then the same cannot be transferred to the name of the applicant, and the other beneficiary as sought in the application.

7. I am prepared to give the executors the benefit of the doubt. I shall, however, require them to provide proof first that the property LR No. 209/2/292 Wilma Court Nairobi is registered in the name of Sesaat Limited as alleged. Such proof to be provided by way of affidavit to be filed within fourteen (14) days. The matter shall be mentioned thereafter for compliance and further directions.

DATED, SIGNED and DELIVERED at NAIROBI this 20TH DAY OF APRIL, 2018.

W. MUSYOKA

JUDGE