

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

IN THE MATTER OF THE ESTATE OF ALICE NJERI KARIUKI (DECEASED)

SUCCESSION CAUSE 2241 OF 2013

RULING

This court has read through this court file as shown above. The Confirmed Grant by Hon. L. J. Achode was that the properties that constitute the estate of the deceased shall be held in trust for beneficiaries; **HANNAH PASCALINA WAIRIMU** and **MARY SALOME GAKUNGA** in equal shares.

From the court record on 14th January 2015 both beneficiaries were in court for Confirmation of Grant of 15th January 2015. However, on 14th June 2016 when the application of 14th June 2016 was not granted by the same court because the Applicant did not produce the co-beneficiary and/or her consent nor medical documents to prove that May Salome Gakunga was incapacitated to manage her share of the estate.

The said application was placed before Hon. J. W. Musyoka and was granted. The Applicant Hannah Pascalina Wairimu did not fully account for the funds the purchase price for Mathare North 1-304 property Kshs. 1.5m which she claimed in her affidavit was to pay creditors on the one hand and to complete construction of the apartments in land Title Ruiru/East/Juja/East Block 2/816 on the other hand.

The supplementary affidavit of 15th August 2018 does not disclose the payments made with regard to creditors as claimed. The purchase of building materials are annexed by photocopied invoices and not receipts to signify payments.

From the above reasons, this court finds that Hannah Pascalina Wairimu Kariuki has not complied with the Confirmed Grant of 15th January 2015 that the properties of the estate of the deceased be held in trust for both beneficiaries equally.

As L. J. Achode enquired on 14th June 2016 where is Mary Salome Gakunga? Why has she not appeared in court since Confirmation of Grant? Secondly, the affidavit of Mary Salome Gakunga filed on 15th August 2018 similar to the one filed on 14th June 2016 are both not signed but written her name "Salome". Thirdly, as L. J. Achode enquired on 14th June 2016 where the medical documents of the said Mary Salome Gakunga were to be produced in court to confirm she is not capable of handling her part of the estate. The same was not forthcoming.

If as alleged Mary Salome Gakunga could not attend court and is not capable to manage her part of the estate how come she "signed" and filed affidavits of consent to sale of properties?

The upshot of these observations is that the instant application of 15th August 2018 is denied / not granted and shall be considered only if;

a) Mary Salome Gakunga appears in court or

b) Medical Documents current on her prognosis/progress/medical status are presented in court.

c) The title documents, agreements for sale and/or photographs of the ongoing construction of apartments in Land Title Ruiru East/Juja East Block 2/816 showing / confirming Mary Salome Gakunga's ½ share of the said property as it is purchased / constructed from ½ of her beneficial interest in the sold property.

DELIVERED DATED SIGNED IN OPEN COURT ON 19TH DAY OF OCTOBER, 2018.

M.W.MUIGAI

JUDGE

IN THE PRESENCE OF;

Mr. Chege for the Applicants