



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MALINDI**

**SUCCESSION CAUSE NO. 163 OF 2012**

**IN THE MATTER OF THE ESTATE OF GODFREY KITUKU – (DECEASED) AND REGINA MUKUI NDAKA – (DECEASED)**

**RULING**

1. In a ruling delivered on 28<sup>th</sup> February, 2017 my brother Chitembwe, J issued various orders including one directed at the then Petitioner Kituku Mutiso Kilatya to file a report on the sale proceeds of all the moveable properties mentioned in the original application but not included in the application for confirmation of grant. There was also an order directing the Petitioner to file a proper statement of account for the remaining estate, the valuation of each property, the liabilities and any settlement of the said liabilities.
2. The administrator Kituku Mutiso Kilatya and his co-administrator Joseph Mbevo Ndaka each filed a separate report on the value of the estate of the deceased persons Godfrey Kituku and Regina Mukui Ndaka.
3. Joseph Mbevo Ndaka representing the estate of Regina Mukui Ndaka engaged Basemark Valuers Ltd whose report is dated 6<sup>th</sup> July, 2018. The valuer established as follows: that there were 5 immovable assets belonging to the deceased Regina, all with improvements save for one occupied by squatters; that there is also a matatu in serviceable condition; and that there were shops having stock of work. The report also states that there was another shop run by the deceased Regina that was sold off to another party and its stock therefore remained unaccounted for. The valuers have itemized each property and its estimated value with the total indicated therein as Kshs. 14,798,000.
4. The valuation report presented by Kituku Mutiso Kilatya representing the estate of the deceased Godfrey Kituku was prepared by Amazon Valuers on 19<sup>th</sup> April, 2017. The report indicates that the estate is made up of 5 unregistered immovable assets, some shops with dead stock and the moveable property being a matatu had stalled or broken down but was deemed repairable. The estimated market value for all the properties has been put at Kshs. 4,695,000.
5. Kituku Mutiso Kilatya also filed a statement of affairs as at 31<sup>st</sup> December, 2017 prepared by Omingo Magara & Associates CPA (K) on 15<sup>th</sup> December, 2017. The statement is stamped but not signed. The statement indicates that a loss of Kshs. 396,920 was realized during the entire period of operations which includes the date of the report. Further, that there were monies owing by the estates of the deceased persons of Kshs.894,491 and that the depreciating value of the matatu renders it a write-off.
6. Together with his two reports, Kituku Mutiso Kilatya filed an affidavit to the effect that the valuation by Basemark is wanting in that it uses approximated values; that two of the properties belonged to him and ought not to form part of the estates of the deceased persons; and that the rental income indicated did not factor in agent fees paid for the collection of the rent. He applied that the valuer be cross-examined.
7. The valuation reports submitted by the parties are not in agreement. One party indicates that the estate is making losses while the other one indicates that the estate has value. In short, the parties are not walking shoulder to shoulder on the net value of the estate or the properties constituting it.
8. Having perused the valuation reports I note that the discrepancies are too wide which is a resounding indicator that the administrators are not in sync and a fair distribution of the estate would not be possible unless the court appreciates a value of the same. A radical solution is required to bring an end to the protracted disputes between the families of the deceased persons.
9. It is noted that the deceased persons were man and wife and died in the fire together with their only two children who were toddlers at the time.
10. Kituku Mutiso Kilatya is the father of the deceased Godfrey who was the husband of the deceased Regina. Joseph Mbevo Ndaka is the brother of the deceased Regina. The parties cannot be said to have special attachment to any property in the estate of the deceased persons. Allowing the parties to continue the push and pull will lead to the wastage and depreciation of the estates of the deceased persons and at the end of the day there may be nothing to share.
11. In order to bring this matter to conclusion, I direct the advocates for the administrators (Kituku and Joseph) to jointly appoint an auctioneer to auction the properties of the estate of the deceased as identified to the auctioneer either jointly or separately by the administrators of the estates of the deceased persons. The said appointment should be done within 60 days from the date of this ruling. Upon the disposal of the estate, the auctioneer will deposit the proceeds less the auctioneer's charges in court for distribution in the ratios already provided by this court in the ruling of 28<sup>th</sup> February, 2017.

**Dated, signed and delivered at Malindi this 17<sup>th</sup> day of December, 2018.**

**W. KORIR,**

**JUDGE OF THE HIGH COURT**