

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 164 OF 2017

IN THE MATTER OF THE ESTATE OF ERICK KURIA WAKANENE (DECEASED)

RULING

Through a confirmed grant of letters of administration intestate dated 11/7/2008 in respect of the estate of Harun Wakanene Mbuthia, one Josephine Wanjiku Wakanene a widow and Robert Mbuthia Wakanene a son were appointed as administratrix and administrator of the estate respectively.

The two administratrix and administrator, held all the estate in trust for the widow Josephine Wanjiku Wakanene and her children Robert Mbuthia Wakanene (administrator) Eric Kuria Wakanene and Stella Wanjiku Wakanene in equal share. Subsequently, property was transferred into the names of the mother, (Josephine Wanjiku), brother Robert Wakanene and a sister one Stellah as per the confirmed grant. Among the property that was shared in equal shares was Dagoretti/Karandini/44.

However, on 4/4/2016, one Eric Kuria Wakanene passed on leaving his mother Josephine Wanjiku, brother Robert Mbuthia Wakanene and sister Stella Wanjiku the only survivors.

Consequently, the mother and brother aforementioned petitioned this court through this file on 13/2/2017 seeking for special grant of letters of administration in respect of the estate of Eric Kuria Wakanene for purposes of processing a loan from Co-operative Bank with land parcel No. Dagoretti/Karandini/44 as the security. It is their contention that they want to charge the property with the deceased's name appearing as one of the beneficiaries (owners) so that they could raise some money to enable them administer the estate.

Application is supported by a sworn affidavit deposed by the applicants on 10/2/2017.

I have considered the petition herein, affidavit in support and submissions by counsel for the applicant. Application/petition is premised on the ground that there is an urgent need to obtain a loan at Co-operative Bank using one of the properties to which the deceased Eric Kuria is registered as a joint owner in a jointin common to settle with his mother, brother and sister. The applicants gave an.... explanation that they meant to secure a loan so as to raise money for purposes of administering the estate of the deceased. They also go further to explain how much money they want to raise from the charge (loan) and for what purpose.

It is not enough to state that they want to secure a loan for purposes of administering the estate. The deceased died while single having no children nor wife. All the properties in which he is appearing as a joint proprietor were inherited from his father jointly with his mother and siblings. The purpose of obtaining a special grant is to arrest an urgent need or situation which practically cannot wait for amend grant of administration..... It is not intended to secure loans which in case of default might result to disposal or sale of deceased's property. That would not be in the interest of the estate. In any event, the applicants did not demonstrate the urgency and what loss the estate will suffer if such orders were not granted.

I do not find any merit in the application herein. Application is rejected and the applicants advised to file a normal succession petition for grant of letters of administration and confirmation thereafter.

Order accordingly.

J.N. ONYIEGO (JUDGE)

Dated and delivered in open court today the 28/2/2017 in the presence of Gatere Advocate holding brief for Wandungi Advocate for the applicant.

28/2/2017:

Before Hon. Justice Onyiego J.N.

Court Clerk – Edwin

Court: Ruling delivered in open court before Gatere Advocate holding brief for Wandungi for the applicants.

J.N. ONYIEGO (JUDGE)

28/2/2017