



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**

**SUCCESSION CAUSE NO. 164 OF 2017**

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

**RULING**

1. Vide summons dated 14<sup>th</sup> day of July, 2017 filed on the same day pursuant to rules 59 and 73 of the Probate and Administration rules, the applicants sought orders that:

**1. This application be certified urgent and be heard on priority basis.**

**2. This honourable court be pleased to issue an order allowing the applicants to charge the property known as Dagoretti/Karandini/44 to Co-operative Bank Ltd. for the beneficial interest of the estate of Harun Wakanene Mbutia (deceased) before the grant is confirmed.**

**3. Costs of the application be in the cause.**

2. Application is based on grounds on the face of it and a joint affidavit in support deposited on 14<sup>th</sup> July, 2017 by the applicants herein Josephine Wanjiku Wakanene and Robert Mbutia Wakanene.

3. On 13<sup>th</sup> February, 2017, the applicants filed an application seeking special limited grant wherein they sought court orders allowing the applicants to charge the property referred to hereinabove to Co-operative bank for purposes of securing a loan. The court rejected the application and advised the applicants to petition for a full grant which they did and a grant of letters of administration intestate was issued to the applicants jointly on 30<sup>th</sup> June, 2017.

4. The applicants herein who are jointly registered in equal shares as owners of Dagoretti/Karandini/44 together with their mother Stella Wanjiku and the deceased in this proceedings, are seeking similar orders as those contained in the application dated 13<sup>th</sup> February, 2017 which was dismissed.

5. During the hearing, counsel for the applicants Mr. Kimani urged the court to consider the application in the interest of the estate.

6. I have considered application herein, affidavit in support and submissions by counsel for the applicants. Application is seeking orders authorizing the applicants/administrators to charge the property which constitutes the estate of the deceased to Co-operative Bank for purposes of securing a loan.

7. The applicants have not sufficiently demonstrated to the court why they cannot wait for the formal confirmation of the grant before processing a loan. There is no proof that the loan they want to secure using the property of the deceased is in the interest of the estate and that the estate stands to suffer if such

orders are not made.

8. I do not find any urgency nor merit in the application. The deceased was a mere co-proprietor of the jointly owned property. He was not married nor did he have any children. The applicants are merely rushing the process of the court without any consent or convincing reasons for their own benefit and not the estate.

9. For the above stated reasons, application herein is dismissed with no order as to costs.

Order accordingly.

**SIGNED, DATED AND DELIVERED AT NAIROBI THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2017.**

**J. N. ONYIEGO (JUDGE)**

In the presence of

.....Counsel for the Applicants

.....Court Assistant