



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1100 OF 2015

IN THE MATTER OF THE ESTATE OF SAMSON MWANGANGI NZIOKA

RULING

1. The application for consideration is dated 24th April 2015. The applicants are the intended administrators of the deceased's estate seek a special limited grant for purposes of completing a sale initiated by the deceased. The applicants in their supporting affidavit depone that the deceased died intestate on 2nd October 2014 in Nairobi and that they urgently seek to complete a transaction initiated by the deceased in respect of land reference No. 37/262/22 situated in Nairobi. That there is already a signed agreement executed by the parties on 15th August 2014 and the purchaser had already paid to the deceased Kshs. 4,000,000/- and the purchaser of the said parcel of land had already applied for a loan facility from National bank of Kenya to complete payment on the same and is only awaiting the signing and registration of the transfer in order to release the funds. That the sale agreement has a penalty clause that allows the purchaser to rescind the agreement should the vendor fail to complete the sale and the estate would be forced to refund the deposit together with interest to the purchaser. That the family of the deceased wishes that the said transaction is completed as that was the wish of the deceased.
2. That the deceased was survived by;

Beatrice Kanyila Nzioka aged 78 years- wife

George Mwilu Mwangangi - Grandson

Justus Nzeki Mwangangi - Grandson

Brenda Kalewa Mwangangi – Granddaughter

Alice Ndululu Mwangangi - 2nd wife – deceased

Lazarus Ndolo Nzioka- Son

Mary Mwelu Nzioka – daughter

Florence Ndunge Nzioka – Daughter

Peter Mulei Mwangangi – Daughter

Jennifer Nzaumi Mwangangi – Daughter

Alice Mwelu Nzioka- 3rd wife (deceased)

Agnes Wavinya Nzioka – Daughter

Esther Mwikali Nzioka – Daughter

Ruth Ndinda Nzioka – Daughter

Rose Mwendu Nzioka – Daughter

Mercy Mueni Nzioka – Daughter

Christine Muthoki Nzioka - daughter

Ann Kathike Nzioka – Daughter

3. **Section 54** of the Law of Succession Act Cap 160 provides that, “*A court may, according to the circumstances of each case, limit a grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule.*” Further **Rule 36** of the Probate and Administration rules provides that,

“where owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defuncti of the estate of the deceased.”

4. The purpose for the limited grant sought by the applicant is for the sole purpose of completing a sale that had been initiated by the deceased as evidenced by the annexed sale agreement dated 15th August 2014. The said sale agreement indicates that the sale price is Kshs. 40,000,000/- with Kshs. 4,000,000/- having already been paid to the deceased and the balance of Kshs.36,000,000/- still owing. The said agreement at clause 13(a) provides that, “*if the sale is not completed through the fault of the Vendor or the vendor is unable to complete or avail any documents or consents required herein by the completion date the purchaser may at its discretion rescind the Agreement and the vendor will immediately thereafter refund any deposits and any monies paid without any deductions whatsoever together with interest thereon at the rate of provided in the Law Conditions of Sale.*”

In the case of **Morjaria -vs- Abdalla (1984) KLR 490.8**, it was held that for an applicant to succeed in such an application, he ought to satisfy the court of the urgency and special circumstances pertaining to the matter.

5. There is also filed a consent signed by the intended beneficiaries as listed by the applicants in paragraph 13 of their affidavit in support of the said petition for limited grant. I find that there is indeed urgency in granting the said special limited grant solely for the purpose of completing the sale of **L.R. 37/262/22**. I grant **Patrick Kyaka Mwangangi, Frank Manthi Mwangangi and John Nzioka Mwangangi** the intended administrators a special limited grant of administration of the estate of **Samson Mwangangi Nzioka** who died domicile in Kenya on 2nd October 2012, limited for the purpose of completing a sale of **L.R. 37/262/22** situated in Nairobi. The said administrators will also do all that is required with respect of completion of the said sale and see it to its conclusion.
6. The applicants also state that that they have no power to distribute the deceased’s estate under this grant. I note that the sale proceeds of Kshs. 36, 000, 0000/- forming part of the deceased estate will be paid by the purchaser. In order to protect the estate of the deceased I invoke the powers vested by Rule 73 of the Probate and Administration and order that the said sale proceeds be paid

into an interest earning account opened by in the names of the three intended administrators. The same to be done within 30 days from the date of this ruling. The intended administrators should take the necessary steps to obtain a full grant have the same gazetted and confirmed as provided for under the law to ensure proper management of the deceased's estate. Cost in the cause. It is so ordered.

Dated, signed and delivered this **18th** day of **June** 2015.

R. E. OUGO

JUDGE

In the presence of:-

.....**For the Applicants**

.....**Court Clerk**