



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**SUCCESSION CAUSE NO. 1884 OF 2011**

**IN THE MATTER OF THE ESTATE OF JACINTA NJERI KIARIE (DECEASED)**

**RULING**

1. The application dated 25<sup>th</sup> April 2014 seeks three principal orders:-

- a. That Balcon Housing Company Ltd be enjoined as an interested party to the proceedings;*
- b. That an order of specific performance of the sale agreement entered into by the applicant, Balcon Housing Company Ltd and the deceased; and*
- c. That upon the balance of the purchase price being paid to the administrators, the company be authorized to engage surveyors to subdivide the property in question and to process a certificate of title in favour of the applicant.*

2. From the outset, it is clear that the applicant company is not beneficiary of the estate, but claims purchaser's interest in the estate. Consequently, the company need not be party to the succession cause. The orders it seeks in the application in prayers 2 and 3 are orders that cannot be granted by a probate court. These are third party claims against the estate. They ought to be sought in a civil suit, properly commenced by the company as a plaintiff against the estate as a defendant. To deal with these issues within the succession cause is to unnecessarily make the proceedings complex and convoluted.

3. On prayer 1, the joinder as interested party, the legal position is that the succession process does not provide for such parties. What it envisages is that a party who is not a survivor or heir or dependant of the deceased, but who has some interest to protect in the estate, ought to lodge a caveat at the registry requiring that they be notified when a confirmation application is filed so that they can possibly file affidavits of protest to state their interest. This is clearly provided for in Part IV of the Probate and Administration Rules, rules 15 to 17. Ideally, that is the procedure that the applicant should have followed.

4. I am alive though to the fact that often the registry omits to inform the caveators whenever the confirmation applications are filed, leading to a situation where the caveators fail to intervene, the grants get confirmed and they have to apply for revocation of grant in order to have their interests protected. The joinder sought only entitles the interested parties to be nominal parties, lying in wait until the confirmation application is lodged when they can then argue their case.

5. I allow the application dated 25<sup>th</sup> April 2014 in terms of prayer 1, prayers 2 and 3 of the application are dismissed.

**DATED, SIGNED and DELIVERED at NAIROBI this 18<sup>TH</sup> DAY OF DECEMBER, 2015.**

**W. MUSYOKA**

**JUDGE**