

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO.202 OF 2007

IN THE MATTER OF THE ESTATE OF M N N (DECEASED)

G W N.....Objector

Versus

R W M.....Petitioner

R U L I N G

On 12th July 2011, this court delivered its judgment in respect of the dispute between the beneficiaries of the estate of the deceased relating to the distribution of the only property that comprised the estate of the estate of the deceased *i.e.* LR. No. [particulars withheld]. The material part of the judgment, the court rendered itself thus:

“The Petitioner, R W M and S W N, the unmarried daughters of the deceased shall each be entitled to inherit 30.5% of the value. The three married daughters shall each be entitled to 13% of the said value. The petitioner and S W N shall be given the first option of purchasing the shares of the three married daughters. The two unmarried daughters shall pay off the married daughters the value of their shares within six (6) months from the date of the valuation of the suit property. There shall be no orders as to costs. Either party shall be at liberty to apply.”

There was no appeal against the decision of this court. S W N did not exercise her option to purchase the property within the six (6) months period that was provided by the court. On 2nd July 2012, the other beneficiaries filed an application before this court seeking permission to be allowed to sell the subject property to the highest bidder and thereafter have the proceeds therefrom be distributed as ordered by the court. The application was opposed by S W N. It was her case that she ought to have been given an opportunity to purchase the suit property. After considering the rival submission in respect of the matter, Musyoka J delivered his ruling on 27th June 2013. In the ruling, he allowed the application. He noted that S W N had been given all the opportunity to exercise the option to purchase the suit property but had failed to do so.

It is as a result of that ruling that the Objector G W N has filed the present application seeking the orders of this court for the Deputy Registrar to sign the application to the Land Control Board and all other conveyancing documents to enable her to transfer the suit property to the purchaser that shall be identified after the property is sold to the highest bidder. It was her case that the Administrator R W M had frustrated all efforts by the beneficiaries to have the suit property sold and the proceeds therefrom distributed to the beneficiaries as ordered by the court. In her response, the Administrator swore a Replying Affidavit. In the said affidavit, she deponed that the Applicant did not have mental capacity to prosecute the matter because she was mentally unfit. She further stated that she was willing to purchase the suit property and if the court allowed, she would deposit the sum of Kshs.2,000,000/- to the court being the value of the suit property. The Objector was not impressed by this offer and was of the view that it was yet another ploy by the Administrator to frustrate the distribution of the estate of the deceased.

At the hearing of the application, this court heard rival submission made by Mr. Mugu for the Applicant and by Mr. Misati for the Administrator. The facts of this Cause are not in dispute. The court has already rendered its determination in regard to how the estate of the deceased is to be distributed to the beneficiaries. From the pleadings filed, it is apparent that the Administrator has frustrated the

beneficiaries from accessing what is due to them from the estate of the deceased. Although the Administrator has attempted to paint the issue in dispute as essentially the valuation of the suit property, this court's assessment of the dispute is that in actual fact it is the Administrator who has proved to be a stumbling block in the distribution of the estate of the deceased to the beneficiaries.

This court will allow the application by the Applicant but with one caveat: as ordered by Musyoka J, the suit property shall be sold to the highest bidder. Upon receiving the highest bid, the Administrator shall be granted fourteen (14) days to match the highest bid. The Administrator shall be required to pay the amount to the Advocate of the Applicant in full within that period. If she fails to do so, the Applicant shall be at liberty to proceed and sell the suit property to the highest bidder. The Deputy Registrar of this Court shall then execute all the conveyancing documents in favour of such purchaser. It is so ordered.

DATED IN NAIROBI THIS 25TH DAY OF MARCH, 2014

L. KIMARU

JUDGE