



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**SUCCESSION CAUSE NO. 62 OF 2000**

IN THE MATTER OF THE ESTATE OF ESHA MOHAMED ADAM (DECEASED)

**RULING**

This matter concerns the disposal of the Estate of the late **ESHA MOHAMED ADAM** (the deceased). The applicant **OMAR MOHAMED** is an Administrator of the estate together with his brother **ABDUL RAZAK KHALIFA** – both are sons of the deceased. There exists no dispute regarding the number or identities of those entitled to inherit from the deceased nor is there any dispute regarding the assets of the estate which are available for distribution. Indeed the only asset of the estate is a property known as Block No. XVII 11497. The dispute in this matter revolves around the **value** of this single asset. The property is currently occupied by the applicant (Omar) who wishes to retain the same. By a ruling dated 8<sup>th</sup> March, 2013 this court ordered that the parties agree on a valuer to conduct a valuation of the property. The applicant Omar was to be given first priority to buy out the other beneficiaries based on this valuation. If the applicant was unable to buy them out then the property would be sold to the highest bidder on the open market and the proceeds distributed to all the beneficiaries in accordance with Islamic Sharia Law. This is where the process has gotten stuck. The respondent did engage a valuer **Messrs Pivot Valuers Limited** who conducted a valuation and valued the property at Kshs. 10.5 million. The applicant has objected to this valuation claiming that the valuer was not appointed in agreement with himself and other beneficiaries. He claims that the valuer is biased towards the respondent and that he has presented an exaggerated figure of 10.5 million. On his part the applicant states that the value is more likely to be about Kshs. 5.0 million.

The court had allowed the parties to engage a valuer of their choice in the belief (clearly mistaken as it turns out) that consensus would lead to agreement. We now have three (3) different valuations for the same property. Basemark Valuers Limited by their report dated 26<sup>th</sup> October, 2013 valued the property at Kshs. 2.0 million. Musyoki & Associates in their report dated 14<sup>th</sup> May, 2013 valued the same property at Kshs. 5.6 million. Now we have Pivot Valuers who have given a valuation of Kshs. 10.5 million again for the same property. These figures all have wide discrepancies and even giving allowance for appreciation in my view something is amiss. In order to settle the matter I hereby direct that the property be valued by a court appointed valuer being the Government Valuer in the Ministry of Lands Mombasa whose valuation **shall** be binding on all the parties. The cost of this valuation to be met by the applicant Omar Mohamed. The same to be concluded within thirty (30) days of today's date and report filed in court. Mention on 16<sup>th</sup> June, 2014.

**Dated and delivered in Mombasa this 25<sup>th</sup> day of April, 2014.**

**M. ODERO**

**JUDGE**

In the presence of:

Mr. Ngige h/b Mr. Hayanga for Applicant

Ms. Tsuma h/b Mr. Odongo for Respondent

Court Clerk Mutisya