



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO.2525 OF 1997**

**AND**

**IN THE MATTER OF WARURU KAIRU- (DECEASED)**

**RULING**

1. The application dated 13<sup>th</sup> June 2006 seeks confirmation of the grant made on 7<sup>th</sup> December 2005. The same is premised on the affidavit of George Kairu Waruru an administrator. He has attached copies of orders previously made in the matter on distribution and a schedule of the proposed distribution.

2. The other administrator filed an affidavit in reply to the distribution proposed by the applicant. She complains that she was not consulted when the schedule attached to the application was being prepared, but she has no problem with it save for the distribution of Njoro/Ngata/B.2 Ngecha LR 271 which is subject to an appeal to the Court of Appeal when 2.5 acres of the land were sold in 1999 to Anthony Nginyo Njoroge. Her view is that the purchase ought to have been taken into account in the distribution.

3. In principle the respondent supports the application save for the two concerns that she has raised. Regarding the intended appeal all I can say is that it would appear no appeal has been filed so far. Even then the respondent has not expounded on the matter and I therefore have no basis which I can determine whether the pendency of the “*appeal*” would be good ground for me to remove the subject property from distribution.

4. On the alleged sale of 2.5 acres of Njoro/Ngata/B.2 Ngecha LR 271 in 1999, the position in law is quite clear. Section 82 of the Law of Succession Act provides as follows:-

***“82. Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers-***

***(a) ...***

***(b) to sell or otherwise turn to account, so far as seems necessary or desirable in the execution of their duties, all or any part of the assets vested in them, as they think best:***

***Provided that –***

***i. No immovable property shall be sold before confirmation of the grant.***

***(c) ...”***

5. The effect of *Section 82(b) (ii)* is that estate property should not be sold before the grant is confirmed. Ideally, where it becomes necessary to sell property to meet certain needs, leave of court must be obtained. In this case is it not indicated who sold the property and why, and whether the permission of the court had been obtained. In the absence of evidence of such permission, I shall assume that there was no permission to sell. The said sale was therefore contrary to *Section 82 (b) (ii)* of the Law of Succession Act and consequently the same was a nullity.

6. In view of everything that I have said above, I will allow the application dated 13<sup>th</sup> June 2006. The estate shall devolve as per the schedule annexed to the affidavit of the George Kairu Waruru sworn on

12<sup>th</sup> June 2006 and marked as annexure “GKW4”. There shall be no order as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 25<sup>th</sup> DAY OF April 2014.**

**W. MUSYOKA**

**JUDGE**

**No appearance for the objector.**

**No appearance for the respondent.**