



**REPUBLIC OF KENYA**

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

**SUCCESSION CAUSE NO.1331 OF 2001**

**IN THE MATTER OF THE ESTATE OF K M M (DECEASED)**

E W N..... APPLICANT

**RULING**

The Applicant, E W N petitioned this court to be issued with a grant of letters of administration intestate to administer the estate of her late husband K M M – Deceased. At the time of her petition, their only child M M was aged 2?2 years. The Law required that she petitions the court with another person because a trust will of necessity be created when the grant is confirmed. She therefore petitioned the court with R W R, a family friend. The said Robert Wambugu Rukwaro was endorsed by the family of the deceased to act in that capacity. The grant of letters of administration intestate was issued to the petitioners on 17<sup>th</sup> August 2001. The said grant was confirmed on 7<sup>th</sup> October 2002. A property registered as LR. No.Dagoretti/Waithaka/ *[particulars withheld]* (hereinafter referred to as the suit property) was registered in the name of the Applicant to hold in trust for herself and the child of the deceased.

The Applicant has applied under the provisions of **Sections 82(b) and 84** of the **Law of Succession Act** seeking the leave of this court to be allowed to dispose of the suit property so that she can develop another parcel of land being LR. No.Dagoretti/Riruta/ *[particulars withheld]* which is registered in her name. The Applicant had already commenced construction of residential flats on the said property but had run out of funds. She deponed that the development of the said residential flats will improve the income of the family and also benefit the child of the deceased. The co-administrator had no objection to the Applicant being allowed to sell the suit property because, in his view, it would be to the best interest of both the Applicant and the child.

This court has carefully considered the application. **Section 82** of the **Law of Succession Act** provides thus:

***“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) The purchase by them of any such assets shall be voidable at the instance of any other person interested in the asset so purchased; and***

***(ii) No immovable property shall be sold before confirmation of grant.”***

In the present application, the petitioners have already obtained a confirmation of grant. The Applicant persuaded this court that the sale of the suit property will not result in the dependant of the deceased being deprived of what is due to him when he attains the age of majority. The proceeds of the sale of the suit property is intended for the purposes of improving another property which is registered in the name of the Applicant. The improvements thereon will enable the Applicant generate income to support herself and the child of the deceased.

In the premises therefore, this court will allow the application. The Applicant is allowed to sell the suit property known as LR. No.Dagoretti/Waithaka/[ *particulars withheld*] to enable her develop the property known as LR. No. Dagoretti/Riruta/ [*particulars withheld*]. The certificate of confirmation of grant issued on 7<sup>th</sup> October 2002 is rectified accordingly to reflect this determination. It is so ordered.

**DATED AT NAIROBI THIS 23<sup>RD</sup> DAY OF APRIL, 2014**

**L. KIMARU**

**JUDGE**