



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

SUCCESSION CAUSE NO. 343 OF 2010

**IN THE MATTER: THE ESTATE OF ABDULLA SALEH
BURAN BASMER (also known as ABDALLA SWALEH BURAN BASMER) – DECEASED**

RULING

I must apologize that I did not render this decision on 15th February 2012 as I had intended. For some reason the file was taken back to the court registry and has now been brought to my attention after Mr. Mbeto, Counsel for the Administrators, prompting.

I am afraid the order sought has to be declined, at least for now. Some background will explain my decision.

Abdalla Swaleh Buran Basmer (*the deceased*) passed away on 23rd August 2010, on account of a heart attack, so the Certificate of Death says. When this petition for succession of his estate was filed, he is said to have left the following fortune-

- a) All that Maisonette No. 21 on Subdivision No. 5783/1/MN worth about Kshs. 20,000,000/-**
- b) Shares at Metropolitan diagnostic & M.R.I Centre Ltd worth Kshs. 7,000,000/-**
- c) Safaricom Shares worth Kshs. 991,004/-**
- d) Gulf African Bank – Kshs. 2,982,756/-**
- e) Southern Credit Bank – Kshs. 5,900,000/-**

The application before me is a request by the administrators to sell Maisonette No. 21 so as to “**cater for the upkeep, medical and education expenses of the deceaseds children.**” When this application came before me on 21st October 2011 I was troubled by the lack of detail and justification for the order sought. I pointed out to Counsel that neither the application nor the affidavit gave a satisfactory explanation of the following-

- a) Why the only immovable asset of the estate had to be sold to meet the so called pressing needs when there was at least Kshs. 8.8 million in cash available in Gulf African Bank and Southern Credit Bank.**

b)Strict proof of the upkeep, medical and educational expenses that must be met now.

c) Why the concurrence of the beneficiaries of the estate, at least three are adults, had not been sought or shown to court.

d)How the interests of the two children beneficiaries will be safeguarded.

Counsel then applied, and was granted leave to file a further affidavit. Indeed the administrators filed a supplementary affidavit on 16th December, 2011. For some reason none of the issues of concern to this court were addressed. For this reason the application is declined.

This court not insensitive to the beneficiaries of the estate. The administrators are free, at whatever opportunity, to re-argue their plea as long as justification and concurrence of all beneficiaries is demonstrated.

Dated and delivered at Mombasa this 17th day of February, 2012.

F. TUIYOTT
JUDGE

Dated and delivered in open court in the presence of:-
Mbeto for the Applicant
Court clerk - Moriasi