

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

SUCCESSION CUSE NO.1232 OF 2010

IN THE MATTER OF THE ESTATE OF PETER SIRONET KISHOYAN (DECEASED)

RULING

MARY WANJIRU KISHOYAN, and **REUBEN KANGETHE MUCHAI**, the Administrators of the Estate of the deceased, **Peter Sironet Kishoyan, deceased**, applied to this court on 26.10.2011 for an order to be allowed to subdivide and sell a portion of one acre of land from the land Title No.Ngong/Ngong/41630 which constitutes the deceased's Estate. Their reason for wanting to do so is to raise funds to meet the educational expenses and upkeep of the two children of the deceased, namely, **Alvin Tonkei**, aged 17 years, and **Stacy Soila** aged 10 years.

The widow (Mary Wanjira), was a dependant of the deceased. The Grant of the Letters of Administration Intestate was made on 27.1.2011 to the said widow and Reuben Kangethe Muchai.

Attached to the Application dated 17.10.2011 was a copy of a Sale Agreement which shows that the intended purchaser is one Timothy Munene Kirima and the price for the one acre is 1.8 million. The Sale Agreement was signed on 18.6.2010 before the Applicants filed the Application. What the Applicants are asking the court to do is to rubber stamp the sale. The Administrators have not shown that they have obtained the best price possible for the land they intend to sell; they have purported to present the court with a *fait compli*. The court has a duty to safeguard the Estate especially as there are minor children. The Administrators have no right to sell without the sanction of the court the capital asset of the Estate. While the court appreciates that there is need for the children of the deceased to go to school, it is equally desirable that their home where they live is not jeopardized or unreasonably reduced in size through sale at a price that is not reasonable.

For these reasons, I decline to give the approval sought and instead call upon the Administrators to show (1) cause why they sold without authority of the court and (2) whether the purported price of Shs.1.8

million is the best price in the market for a one acre of land at Ngong where the land is situate.

Dated at Milimani Law Courts, Nairobi, this 11th day of March 2012.

G.B.M. KARIUKI, SC
JUDGE

COUNSEL APPEARING

Mr. B. P. Otieno of Bengi, Miriti & Associates Advocates for Administrators

Mr. Kugwa – Court Clerk