



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

SUCCESSION CAUSE NO. 41 OF 2006

ESTATE OF GRACE WANJIRU NGUGI

RULING

The parties in this succession cause recorded consent on 5.11.2010. The terms and conditions are contained herein.

Upon consideration of the application dated 2nd February, 2011, I am satisfied that the Administrator herein is not committed to carrying out the duties as administrator and he is in breach of the terms of the Consent. I do find that it is not possible to open a joint bank account without any funds being availed. The firm of Wambugu Motende & Co. Advocates did not avail the 10% by way of banker's cheque or other transmission to facilitate the opening of the Bank account.

I am satisfied that the applicants are entitled to the orders sought herein. I am doubtful that the Administrator is now entitled to continue holding the position of the Administrator and holding everyone to ransom by his conduct. This court shall not allow that to happen.

The price of the properties was incorporated in the consent order and the Agreements were validated and verified by the court orders herein. The Administrator could only bring in the issue a new price/value by applying to court to set aside the consent order which was now clearly subject to the interest of third parties.

In the light of this, I do hereby grant prayers (b) with the alternative that the buyers thereof who may be innocent be allowed to complete the sales but the balance purchase price be paid through M/s Mereka & Co. Advocates.

Any monies held by Wambugu & Motende Advocates shall not be released to the Administrator by the said firm and shall be held to the orders of this court pending further orders.

I do grant prayer (c), (d) (e) and (g) of the application.

Liberty is given to the Beneficiaries to apply further if the need arise.

Dated and delivered this 11th March 2011

M. K. IBRAHIM

JUDGE