



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Succession Cause 313 of 1993

IN THE MATTER OF THE ESTATE OF ISAAC MURILA MULINYA

(DECEASED)

RULING

In this probate and administration cause in the estate of the late ISAAC MURILA MULINYA who died on 1st January 1993, STANBIC BANK KENYA LIMITED on 11th November, 1996 made a guarantee in the following terms –

1. STANBIC BANK KENYA LIMITED (formerly known as GRINDLAYS INTERNATIONAL (KENYA) LIMITED of Post Office box 30550 Nairobi a company having its registered office at Nairobi and carrying on business at Nairobi (hereinafter called “the company) HEREBY GUARANTEES that it will when lawfully required to do so make good any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of the breach by the New Administration or any of them of their duty;-

(a) to collect and get in the estate of the deceased and administer it according to law.

(b) When required to do so by the court to exhibit on oath in court a full inventory of the said estate and when so required to render an account of the estate and

(c) When so required by the court to deliver up the Grant to the court.

2. The giving of time to the New Administrators or any other forbearance or indulgence shall not in any way effect the company’s liability under this guarantee and this guarantee shall not in any way affect the company’s liability under the guarantee given in this cause by the company under its former name and dated 25th February, 1993.

3. The liability under this guarantee shall be continuing and shall be for the whole amount of the loss mentioned in paragraph 1 above save that the total liability of the company shall not in any event exceed the sum of Kenya

ings Two Million Two Hundred and Sixty Thousand (Kshs.2,260,000).

The amount of Kshs.2,260,000/= appears to be the amount declared by the petitioners for letters of administration, who were EBBY CHAHENZA MULINYA and PATRICIA KHAGAI MILINYA when they filed documents petitioning for letters of administration on 23/3/1992. Letters of administration were granted by the court to the said two petitioners on 12th May 1993. It is apparent from the documents filed that EBBY CHAHENZA MULINYA died on 14th June 1993. Consequently the letters of

administration were confirmed with PATRICIA KHAGAI MULINYA, SUSAN AKWESI MULINYA and TEDDY ANDREW MULINYA as the administrators of the estate on 13th December 1996.

Subsequently, Mr. P.D.B. Walker, counsel for the administrators filed this application dated 13th October 2006 for the discharge of the surety, that is STANBIC BANK KENYA LIMITED from the obligations under the bonds and guarantees entered into by them.

The application does not cite the section of the law under which it has been brought. However, it seeks for two orders, that is that –

1. Stanbic Bank Kenya Limited be discharged from its obligations under the Administration Bonds and Guarantees dated the 25th February 1993 and the 11th day of November 1996 filed in this cause the administration of the estate of the deceased having been completed to the satisfaction of his four children all of whom have attained majority.
2. The costs of this application be in the cause.

The application is supported by two affidavits, both sworn on 13th October 2006. The first affidavit is a joint affidavit of the three administrators PATRICIA KHAGAI MILINYA, SUSAN AKWESI MULINYA and TEDDY ANDREW MILINYA. All these are children of the deceased. The second affidavit was sworn by DOREEN LINDA MILINYA a daughter of the deceased who was a minor when letters of administration were issued. In both affidavits it was deponed that the administration of the estate had been completed in compliance with the court's orders. Both affidavits request the discharge of the guarantor M/S STANBIC BANK KENYA LIMITED from the guarantees dated 25/2/1993 and 11th November 1996.

Both the guarantees were filed in court. This appears to be a case where a corporate body was the guarantor to the administrators, and now wants to be discharged from those guarantees. Though the application does not cite any section of the law that confers on this court the powers to discharge the surety, in view, the fact that all the beneficiaries and administrators have filed affidavits that the estate has been satisfactorily administered, I think that under section 47 of the Law of Succession Act (Cap. 160). I can grant the orders sought. That in my view will serve the interests of justice.

For the above reasons I allow the Summons for Discharge of surety dated 13th October 2006 and grant the two orders sought.

It is so ordered.

Dated and delivered at Nairobi this 12th day of February 2007.

George Dulu

Judge

12/2/2007

In the presence of Mr. P.D. Walker for the administrator.

George Dulu

Judge

12/2/2007