



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Succession Cause 1532 of 2003**

**IN THE MATTER OF THE ESTATE OF AFLATOON SINGH S/O PRITHI SINGH  
(DECEASED)**

**RULING**

This is a Summons dated 22<sup>nd</sup> July 2005, filed by Meenye & Kirima advocates on behalf of the applicant on SHEM MZEE AFLATOON. It was filed under section 47 and 82(b) of the Law of Succession Act (Cap. 160) and Rule 73 of the Probate and Administration Rules. It seeks for two Orders, that –

1. the court do be pleased to permit the administrators, as personal representatives of the deceased, to call in, value and sell the three assets of the estate and distribute the net proceeds thereof to the beneficiaries in terms of the ratios contained in the schedule to the certificate of confirmation of grant dated 2<sup>nd</sup> March 2005.
2. the costs of the valuation, sale, legal representation and administration be borne by the estate and be settled out of the proceeds of the sale on priority.

The application has grounds on the face of the summons

And is supported by the affidavit sworn by the applicant SHEM MZEE AFLATOON on 22<sup>nd</sup> March 2005. The application is opposed and a replying affidavit sworn by KANJI MZEE AFLATOON on 18<sup>th</sup> May 2006 was filed.

At the hearing of the application on 23/5/2006 Mr. Meenye appeared for the applicant, while Mr. Oketch appeared for the respondent. He submitted on behalf of the applicant that the deceased died in 1964. The executors of the will died before administering the estate which had remained unadministered to date. The three plots in question were town plots and were to be shared within 3 houses. There were outstanding rates of about Kshs.600,000/= owed to the City Council of Nairobi. If the orders sought were not granted, the assets of the estate stood to be totally wasted. He contended that though the co-administrator objected to the application in his replying affidavit he did not suggest any other option or proposal that the fact that the estate owed Kshs.600,000/= to City Council of Nairobi.

Mr. Oketch for the objector submitted that his client was of the position that debts had to be collected for the sale of the properties. His client wanted valuation to be done first before considering the sale. Otherwise his client was not opposing the sale.

The applicant herein is seeking for orders of valuation of the assets of the estate, sale of the said assets, and distribution per the certificate of confirmation of grant issued by the court on 2<sup>nd</sup> March 2005. From the submissions of the respondent's counsel, the respondent is not objecting to valuation of the assets or even the sale. However the respondent wants the valuation to be done first, then sale to be considered after valuation. It is agreed that the estate owes rates to the city council of Nairobi and assets are facing the risk of being auctioned. The applicant and respondent are co-administrators. Their function is to take action with best interests of the estate and the beneficiaries. The assets have already been distributed by four but are under threat from a third party. The respondent feels that outstanding rent due to the estate be collected first.

I have considered the application and the argument on both sides. I partly allow the application and order as follows –

1. The administrators as personal representatives of the deceased are permitted to call in and value the three assets of the estate, which they should do within 60 days from the date hereof.
2. Such valuation to be filed in court within the said period of 60 days from the date hereof with proposals on sale and distribution, for determination of the court.
3. The costs of valuation to be borne by the estate.
4. Either party is at liberty to apply to court for further orders or directions.

Dated and delivered at Nairobi this 26<sup>th</sup> day of June 2006.

**George Dulu**

Ag. Judge