

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA A
T NAIROBI (NAIROBI LAW COURTS)

Succession Cause 3070 of 2002

IN THE MATTER OF SAPENCIA OMWAKWE – DECEASED

AND

SUCCESSION CAUSE NO.1319 OF 1992

**IN THE MATTER OF THE ESTATE OF REUBEN MBALANYA OMWAKWE –
DECEASED**

RULING

I have two applications before me. The first one is dated 14th November, 2005 in P & A No.1319/92 which was heard by me ex-parte and I made a ruling on 2nd May, 2006, that similar application be made also in respect of property in P & A 3070/02 as per the order made by Koome J. in her ruling dated 18th February, 2005.

Thus an application by way of Summons dated 5th June, 2006 was filed after several mentions since my aforesaid ruling. I have already stated in my ruling that, the Respondent, in this replying affidavit sworn on 19th January, 2006, has mentioned highly renowned agents like Hass Consul Ltd, Tyson Limited, and Villa Ltd. etc, etc. I do note that the property in question in the said application is situate in Kayole and the applicants suggested estate agent has its base in that area and have located some prospective purchasers for the property.

The Respondent, apart from suggesting names of some high flier estate agents, has not proposed a specific agent to be appointed with reasons for his proposal.

In the premises, I do appoint Stephen Kamanga Njuki t/a Green grass Development Co. Ltd as the agent for the purpose of marketing and selling the properties known as Plot No.4/180 and No.4/181 situate at Kayole.

As prayed for in the application dated 14th November, 2005 I also order that the said agent shall collect the rents from the tenants of the said properties and deposit the sum of the rents collected in the estate Account to be operated jointly by the Advocates of the parties herein. I make this order as Hon. Koome J. has found that the Respondent has been collecting the rents from these two properties and has failed to give any account of such collection.

I further direct following the ruling of 18th February, 2005 that the sale proceeds be deposited in the estate Account to be opened and to be operated by both the Advocates herein and the proceeds to be divided equally amongst the three beneficiaries.

Now I turn to the application dated 5th June, 2006 which similarly seeks prayers that the property known as Nairobi Block 60/385 situate at Langata be sold by M/s Adobe Investment Limited. There is an alternative prayer of purchase by the applicants of ? share of the Respondent.

Since this prayer is not envisaged in the ruling delivered on 18th February, 2005, I shall not dwell on it unless the parties do consent to such prayers.

This property is not in a place where a high ranking Estate Agent will hesitate to do business.

I therefore direct that M/s Tyson limited be appointed as an agent to market and sell the property and its sale proceeds be deposited in the estate Account directed to be opened hereinbefore. The sale proceeds be divided equally amongst the three beneficiaries.

I do not make any order as to costs.

Dated and signed at Nairobi this 18th July, 2006.

K.H. RAWAL

JUDGE

18.7.06