



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Succession Cause 472 of 1982

IN THE MATTER OF THE ESTATE OF OSOB JAMA MOHAMED (DECEASED)

MOHAMED HUSSEIN SALAH.....APPLICANT

VERSUS

FATUMA OGLE JAMA.....RESPONDENT

RULING

By way of Summons under rule 49 of the P & A rules, the Applicant co- Administrator of the estate of the late Osob Jama Mohamed sought for orders that the Deputy Registrar do execute and seal the ASSENT over and in of LR No. 36/1/323 and LR No. 36/1/347 facilitate the transfer to Hussein Mohamed Salah in place of Fatuma Ogle Jama who has refused and/or neglected to execute the documents.

The application is premised on the grounds stipulated on the body of the application and the affidavit of the Applicant. According to the Applicant the grant of letters of Administration of the deceased was issued on 23rd February 2004 to both Fatuma Ogle Jama and Hussein Mohamed Salah. The issue of distribution of the estate having been determined by the decision of the Kadhi of Nairobi whereby both Administrators were established to be the only Beneficiaries of the estate of the late Osob Jama and their respective shares of the estate were determined as follows: Fatuma Ogle Jama 1/3 and Hussein Mohamed Salah 2/3 of the properties known as LR No. 36/1/47 and LR No. 36/1/323. The decision by the Kadhi was made on order of this Court of 11th July 2002.

Pursuant to that order and by consent of the parties herein the Grant of Letters of Administration intestate that were issued to Fatuma Ogle Jama on 7/11/82 was revoked.

A fresh grant of letters of Administration intestate was issued jointly to Fatuma Ogle Jama and the Objector/Applicant Hussein Mohamed Salah.

There were further orders made on 10th May 2004 as follows;

- a) That M/s. Lotus Valuers C/o Hughes Buildings, 3rd Floor. Suit No. 311 Nairobi, be appointed to value the suit properties namely LR. No. 36/1/347 and LR No. 36/1/323 situated in Eastleigh Nairobi to ascertain the open market value thereof for purposes of realizing this estate;
- b) That the cost of the said valuation be paid by Fatuma Ogle Jama from the rental income currently held by her.

c) That the said Fatuma Ogle Jama do furnish this Court and the Applicant within 14 days with a detailed statement of accounts of the rental income received by her from the two properties from 7th November 1982 to date.

After those orders were made, the Applicant sought for the confirmation of the Grant and by the order made on 2/11/04 the Grant was confirmed as the Respondent did not file an affidavit of protest nor was she represented in Court.

No appeal has been lodged against the order of confirmation and since the Respondent has refused and neglected to execute the Assent/Transfer documents to effect the orders of confirmation the Applicant has sought for the orders in the current application.

The Applicant has in this respect invoked the inherent jurisdiction of the Court whereby this Court is empowered to make any orders in the interest of justice and to prevent the abuse of the Court process.

This application was opposed by the Respondent who filed a replying affidavit. The Respondent complains that her former Advocate M/s Ali & Associates failed to contact her and inform her of the hearing date.

Further the Respondent has instructed her current Advocate to file an application to set aside and/or revoke the confirmed Grant and hence Mr. Sharma urged this Court to dismiss the application and allow this matter to proceed for hearing by way of oral evidence.

I have given consideration to those submissions and thus reviewed all the steps that were taken in this matter until the Grant was confirmed.

In the absence of an appeal to set aside the confirmed Grant still stands unchallenged. The Respondent's Counsel who was on record duly served and notified of the hearing but failed to attend Court when the Grant of letters of Administration was confirmed. There is nothing to stop this Court from issuing the orders sought which will give effect to the implementation of the order of confirmation.

I am satisfied that the Respondent Co-Administrator has refused/neglected to effect an execution of the Assent over the suit premises.

Accordingly, I grant prayer No. 2 of the Summons dated 25/5/05 and the Deputy Registrar is hereby authorized to execute and Seal the ASSENT over and in respect of L. R No. 36/1/33 and L. R No. 36/1/347 in place of Fatuma Ogle Jama.

Costs in the cause.

It is so ordered.

Ruling read and signed on 21/10/05

MARTHA KOOME

JUDGE