



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 527 OF 1981

**IN THE MATTER OF THE E10STATE OF MBIYU KOINANGE
(DECEASED)**

IN THE MATTER OF THE E10STATE OF MBIYU KOINANGE (DECEASED)

R U L I N G

This is the application by Ruth Damaris Wambui Mbiyu one of the four administrators of the estate for an order that

1. This court do approve the intended sum of 250 acres in Roseburn estate on terms set out in draft consent letter attached.
2. This court do give firm orders or set further terms in respect of the said transaction and in particular the court do order that the Deputy Registrar at liberty to execute the agreement for sum and/or the transfer in default of extension of any such document by administrator or any of them.

The administrators and beneficiaries and their advocates and a meeting on 26.7.2002 in the offices of Muthoga Gathuru & Co. Advocates. The sale of 250 acres of Roseburn estate to Land Registered Trust or its nominee for a consideration of Kshs.390 million was approved.

The only issue which is contested is which advocates should bundle the conveyance. Three administrators say that the conveyance should be handled by M/s Pandya & Talet Advocates of Mombasa together with his lawyer appointed by Ruth Damaris Wambui. Ruth Damaris Wambui and five beneficiaries recommend that the conveyance be handled by /s Waruhiu & Gaturu advocates who has been dealing with the transaction.

On 19.3.2001, the administrators agreed and a consent order was recorded that 260 acres be excised from L.R No. 209/22 known as Roseburn estate and be sold either in one lot or several lots to pay the liabilities of the estate to pave way for the distribution of the estate. The sale was to be completed within 90 days.

It is now over one year since the other was made. M/s R.M. Wahome & Co. Advocates were appointed as advocates to handle the sale. The appointment of that firm was revoked by administrators and beneficiaries by an agreement dated 4.12.2001. That firm has raise claim for Kshs.7 million for work already done By that agreement of 4.12.2001 the administrators and beneficiaries appointed M/s Waruhiu & Gaturu advocates to handle the conveyance work. Mr. Peter Muhoro Kimani advocate of Waruhiu & Gaturu advocates has filed an affidavit showing that he has done substantial work in the process of conveyance.

It is argued that as per family agreement of 29.7.2002 M/s Pandya & Talat should now do the conveyancing together with another lawyer.

The appointment of Waruhiu & Gathuru advocates by agreement of 4.12.2001 has not been revoked. The family agreement of 29.7.2002 did not specifically revoke the appointment. The firm of M/s Waruhiu & Gathuru advocates have not been accused of any impropriety of conveyance. The removal of that firm with cause substantial loss to the estate for the abortive work. The firm of Waruhiu Gathuru is based in Nairobi. There are to be given by that firm to firm of M/s A.M Wahome company and other professional who were appointed by order of 19.3.2001. Firm of Waruhiu & Gathuru advocates is familiar with the transaction and has done substantial work. If the estate removes that firm the estate will incur unnecessary expenditure. The estate has an outstanding bill of over 57 million in legal fees.

The firm of Pandya & Jalat has not been representing the estate in this matter. The firm is based in Mombasa. The land to be sold is in Nairobi.

Three of the administrators and all beneficiaries live in Nairobi. It is only one administrator who lives in Mombasa. The buyers and their advocates are in Nairobi. The estate will incur substantial expenditure if Mr. Pandya was to cut in this matter.

The administrators are the trustees for the beneficiaries not for the interest of the estate and beneficiaries that the estate continues incurring heavy legal fees.

There is no justification for retaining two firms of lawyers to do the conveyance. If the three beneficiaries fear for the security of the money make necessary orders to protect all the proceeds of sale.

The administrators are required to act together. Some administrators should not be allowed to engage their own lawyers. Having two firms of lawyers each representing some administrators and the other representing one administrator is likely to frustrate the successful sale of the property as the three administrators and their lawyer can refuse to co-operate with the other lawyer. The delay in the winding up of the estate has been due to a large degree caused by the disagreement among the administrators.

In all the circumstances it is in the best interest of the estate and beneficiaries that M/s Waruhiu and Gathuru advocates should be allowed to complete the conveyancing.

For the following reasons, I make the following orders:-

1. That the 260 acres to be exercised from L.R No. Closeburn estate in terms of the consent orders made on 19.3.2001 be disposed as follows:-

(a) By sale of 3 acres from the said portion to Karura Community Chapel for a sum of Kshs. 7 million only

(b) (i) By sale of 250 acres to Land Registered Trust or its nominee for a sum of Kshs.390,000,000 only.

(ii) The purchases shall meet the cost of providing an access road to Limuru road estimated to cost Kshs. 20 million which shall be named MBIYU KOINANGE ROAD. (c) The sale of the remainder being approximately 7 acres to any purchaser at a sum to be approved by court.

2. The sale transaction to be carried out by Waruhiu & Gathuru advocates on behalf of the estate of Mbiyu Koinage – deceased. The purchasers shall appoint their own advocates.

3. The firm of Waruhiu & Gathuru advocates shall receive the purchase price over an estate account at Barclays Bank of Kenya Ltd name of the estate and deposit all proceeds of sale into that account.

4. No payment or disbursement shall be made from proceeds of sale without a specific order of the court.

5. The 10% commission shall be held as part of the purchase price in the said estate account to be claimed

by whichever member of the family who pro..... the purchaser. In the event of a dispute on who provide the purchaser the vendors advocates to take out intre pleader procedures.

6. (i) The firm of Waruhiu & Gathuru advocates to take over and/or assume undertaking matter to issue and/orgiven by M/s A.M. Wahome & Co. Advocates in respect of L.R No. 209/22 Closeburn estate. (ii) M/s Waruhiu and Gathuru advocates shall seek and establish the debt due to M/s Tysons Ltd and such other professionals who carried out professional services.

7. M/s A.M. Wahome & Co. Advocates to furnish a fee note to the counsel for administrators for services already rendered to the estate as a result of the court order given on 19.3.2001. Search fees to be agreed and in case of disagreement the bill be lifted.

8. To facilitate the disposal of 260,000 acres M/s waruhiu & Gathuru advocates do issue appropriate undertakings to Kenya Planters Cooperative Union so as to obtain a partial discharge and failing when he said advocates be at liberty to seek removal fo the charge registered against the property.

9. Upon the payment of the bill purchase price by the respective purchasers, the court to utterance the priorities of payment of liabilities etc upon application by the administrators.

10. M/s Waruhiu of Gathur & Co. Advocates are authorized to use part of the deposits payable by respective purchasers for payment of City Council rates and for such consent and certificates that may be necessary to facilitate the transfer.

11. In default of any administrator refusing to execute the necessary documents to facilitate the registration of the transfer the Deputy Registrar of the High Corut is authorized to execute such documents on behalf of any defaulting administrator.

(a) Liberty to administrators or any of them to apply for any further necessary order.

E.M. GITHINJI

JUDGE

2.8.2002

Mr. Ngatia present

Mr. Macharia Njore present

Mr. Njiru present

Mr. Gathuru present

Mr. Gitau for Mr. Muthoga present

Mr. Wandaka present also holding brief for Mr. Nzuki Mwizi and Mr. Gathuru

Margaret Njeri

David Njuno present Some beneficiaries present