



REPUBLIC OF KENYA



KENYA LAW
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In re Estate of the Late Peter Omondi Adoyo (Deceased) (Succession Cause 1043 of 2013) [2025] KEHC 4155 (KLR) (Family) (3 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4155 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 1043 OF 2013
HK CHEMITEI, J
APRIL 3, 2025**

BETWEEN

JOHNSON MUTISO OMONDI APPLICANT

AND

TRUPHOSA APONDI OMONDI RESPONDENT

RULING

1. In his application dated 19th September 2022 the Applicant is seeking orders that:-
 - (a) The court do declare null and void the sale of LR No. 36/979/1 situated at Eastleigh as the same was procured in breach of the orders of court dated 29th July 2022.
 - (b) The court does compel the Respondent to produce the documents relating to the purported sale of LR No. 36/979/1 situated at Eastleigh.
 - (c) The court do stay further dealings with land parcel number 36/979/1.
 - (d) The court do appoint a valuer and direct that the same be sold at Kshs 70,000,000 and proceeds be shared as per the judgement dated 29th July 2022.
2. The application is based on the grounds thereof and the affidavit of the Applicant sworn on the same date and further affidavit dated 23rd January 2023.
3. The Respondent vide her replying affidavit sworn on 9th October 2022 and 27th January 2023 has vehemently opposed the said application.
4. The court directed the parties to file their written submissions which they complied.



5. The issues before court are well defined. This court vide its judgement dated 29th July 2022 directed that the property namely LR No. 36/879/1 be valued and the same sold and thereafter the proceeds be shared out among the beneficiaries.
6. The Respondent immediately embarked on the exercise and managed to get a valuer one Anthony N Nzuve who valued the property at Kshs.15 Million. The Respondent thereafter sold the said property to one Victor Mwendwa Muithya for the aforesaid amount as per the sale agreement dated 30th August 2022.
7. The Applicant has deponed that the said valuation was riddled with irregularities significant of which is that he had already obtained an offer of Kshs.70,000,000/= which was not accepted by the Respondent. That the said valuer was not a duly registered as per the Valuer's Act and in the premises the entire valuation including the sale was void
8. The Applicant went ahead to attach a copy of the Kenya gazette dated 18th February 2022 in which the said valuers name was missing. The search accompanying the gazette equally indicated that by the time he undertook the valuation he had no license.
9. The Respondent objected to this line of argument stating in her further affidavit that although the name was not gazetted, he was still a registered valuer and therefore the valuation was valid for all intent and purposes.

Analysis And Determination

10. I have perused the submissions extensively and I do not find any reason to reproduce them here save to state that they are generally a replica of the rival affidavits save for the cited authorities.
11. The basic question to begin with is the competency of the valuer. Was he qualified and duly registered and gazetted to undertake the exercise? If not does this invalidate the entire valuation and therefore all the subsequent proceedings?
12. Section 8 and 9 of the Valuer's Act states as follows:-
13. Section 8 provides as follows:-
 - “(1) The registrar shall cause to be published in the Gazette, as soon as may be practicable after entry in the register, the name, address and qualification of each registered valuer and, subject to the directions of the Board, he may cause to be so published any amendments to the register.
 - (2) The registrar shall cause to be published in the Gazette at the beginning of each year a list containing the names, addresses and qualifications of all registered valuers then appearing on the register.” (Underlining mine).
14. Section 9 on the other hand states:-

“Publication under section 8 shall be prima facie evidence that the persons named therein are registered valuers and the deletion from the register of the name of any person notified by the publication, or the absence of the name of any person from the publication, shall be prima facie evidence that the person is not registered.” (Underlining mine)
15. My understanding of the above portions of the law is that one must be duly registered to practice and for that matter every calendar year a gazette notice must issue.



16. I have perused the gazette notice dated 18th February 2022 attached to the Applicant's further affidavit dated 23rd January 2023 and the name of Anthony Nzuve does not appear.
17. At the same time the search conducted and marked as annexure (jmo2) by the Applicant in the said affidavit does indicate that as at the year 2021 the said valuer had no license to practice.
18. The Respondent countered this by deponing that as at 26th January 2023 the Valuer's Registration Board confirmed that he was duly registered. Consequently, although he was not "licensed" in 2022 he was nevertheless competent and therefore his report was valid.
19. I don't think the argument by the Respondent holds water. The purpose of annual gazettement in my view is for purposes of practicing in that specific calendar year and if the name was missing then the logical understanding and conclusion is that he had no capacity to undertake any valuation exercise.
20. In essence therefore the valuation exercise dated 27th August 2022 by Reliance Valuers Limited was undertaken by a valuer from that firm, Anthony Nzuve who had no capacity as he was not gazetted in that particular year to practice. In short, he did not have a license.
21. In my view therefore all the other arguments by the parties are peripheral in nature. The substratum of the transaction undertaken by the Respondent was the valuation as directed by the court. Since the same was undertaken by unqualified person the entire exercise and the results become null and void.
22. It therefore means in short that the conveyancing exercise undertaken based on the illegal or irregular valuation becomes an exercise in futility and the parties must go back to the drawing board as directed by this court.

PARAGRAPH 23.

In the premises I do find the application merited and order that:-

- (a) The valuation and sale of LR No 36/879/1 situated at Eastleigh by the Respondent for all intend and purposes is hereby declared null and void.
- (b) Fresh valuation be undertaken in line with the decree and judgement of this court dated 29th July 2022.
- (c) The parties should agree on a mutual duly registered and license valuer and in default the Deputy Registrar of this court be at liberty to appoint one.
- (d) Costs of the application to the Applicant.

Dated signed and delivered at Nairobi via video link this

3rd day of April, 2025.

H K CHEMITEI

JUDGE

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