



**In re Estate of Carl Peter Roseberg (Deceased) (Succession Cause 320 of 2015)
[2023] KEHC 2196 (KLR) (Family) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 2196 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
SUCCESSION CAUSE 320 OF 2015
MA ODERO, J
FEBRUARY 10, 2023
IN THE MATTER OF THE ESTATE OF CARL PETER ROSEBERG (DECEASED)
BETWEEN
RACHEL GATHONI MBAI APPLICANT
AND
ALIA NAIMA RESPONDENT**

RULING

1. Before this Court for is the Summons dated June 27, 2022 by which the Attorney – Administrator Rachel Gathoni Mbai seeks the following orders:-
 - “1. Spent.
 2. That the Attorney Administrator, Rachel Gathoni Mbai, sell the property known as Land Reference Number 7583/44 (hereinafter the “property”) at the agreed minimum reserve price of Kenya Shillings Two Hundred Million (KES 200,000,000/-).
 3. That subject to any statutory and legal fee deductions, the net proceeds from the sale of the property be distributed equally between the five beneficiaries in accordance with the Deed of Family Arrangement dated January 22, 2015.
 4. That the court do issue any other order the court deems appropriate in the circumstances.
 5. That the costs of this suit be provided for.”



2. The summons which was brought under Rule 49 of the Probate and Administration Rules was supported by the Affidavit of even date and the Further Affidavit dated August 5, 2022 both sworn by the Attorney Administrator.
3. The Respondent Alia Naima opposed the application through her Replying Affidavit dated July 14, 2022. The matter was canvassed by way of written submissions. The Attorney – Administrator filed the written submissions dated August 11, 2023 whilst the Respondent relied upon her written submission dated September 16, 2022 .

Background

4. The succession cause related to the estate of the late Carl Peter Roseberg (hereinafter ‘the Deceased’) who died in Lund, Sweden on August 4, 2011. A copy of the Death Certificate issued in Sweden is annexed to the supporting Affidavit dated June 27, 2022 (Annexure ‘RGM1’). At the time of his demise the Deceased was domiciled in the Republic of Kenya.
5. The Deceased was survived by his widow Alia Naima (the Respondent herein) and four (4) daughters namely:-
 - i. Diana Magdalene Rosberg
 - ii. Maria Ulrika Backstrom
 - iii. Mari Irene Roseberg Graca
 - iv. Malin Margareta Roseberg(Hereinafter referred to as ‘the daughters’).
6. Following the demise of the Deceased a Grant of Administration to the estate was granted to one Peter Lundstrom (Hereinafter the ‘Swedish Administrator’) on August 29, 2011. A copy of said Grant appears as Annexure ‘RGM2’ to the Supporting Affidavit.
7. The Swedish Administrator through a Power of Attorney dated April 5, 2013 (Annexure ‘RGM3’) appointed Nigel Havergal Shaw (hereinafter referred to as the ‘First Attorney-Administrator’) of Kaplan and Stratton to be the lawful attorney for purposes of resealing the Swedish Grant in the High Court of Kenya and administering the estate of the Deceased. A resealed Grant was issued by the Kenyan courts on June 11, 2015 (Annexure RGM ‘5’).
8. Thereafter on May 6, 2022 the resealed Grant issued to Nigel Havergal Shaw was revoked and a rectified resealed Grant was issued in the name of Rachel Gathoni Mbai the current Attorney Administrator.
9. One of the assets comprising the estate of the Deceased in Kenya is the property known as LR Number 7583/44 (hereinafter ‘the Karen Property’). The said Karen Property is currently occupied by the Respondent who is the widow of the Deceased.
10. The four (4) daughters the Respondent (widow) together with the first Attorney – Administrator Nigel Havergal Shaw on January 22, 2015 entered into a ‘Deed of family arrangement’ (hereinafter referred to as ‘the Deed’) regarding the estate of the Deceased. The original copy of the said Deed is Annexure ‘D’ to the Affidavit sworn by the first Attorney-Administrator dated February 13, 2015.
11. Paragraph 1 of the second Schedule of the Deed dated January 22, 2015 provided that the widow ‘Alia’ wished to retain the Karen Property. That the property was to be valued by a professional valuer and thereafter the Respondent would purchase the property at 4/5th of the market price and the proceeds of sale would be shared out amongst the remaining beneficiaries (the four (4) daughters of the Deceased).



12. The Deed went on to provide that in the event the Respondent was unable to afford to purchase the Karen Property on the given terms, then the same would be sold to a third party at market value and the sale proceeds be divided equally between the widow and the four (4) daughters of the Deceased.
13. The Attorney-Administrator averred that in the year 2016 Knight Frank Valuer Ltd valued the 'Karen property' at Kshs 285, million. That the Respondent was not able at the time to pay 4/5th of that value.
14. The Attorney-Administrator further avers that in exercising the second option provided for in the 'Deed' the beneficiaries have severally sourced and obtained buyers for the 'Karen Property' but that the Respondent has persistently frustrated and/or refused to co-operate in the sale of the said property to a third party.
15. That the beneficiaries have now received an offer to purchase the Karen Property at a price of Kshs 200 million which offer the four (4) daughters are ready and willing to accept. However once again the Respondent has failed/refused and/or neglected to accept the offer of Kshs 200 million thereby, dishonouring the terms of the 'Deed' voluntarily entered into by all the parties.
16. The Attorney-Administrator now urges the court to intervene, as there is a likelihood that the offer may be withdrawn if not accepted in a timely manner. That the failure to sell/dispose of the 'Karen Property' is delaying the administration of the estate to the detriment of all the beneficiaries.
17. On her part the Respondent denies the allegation that she has frustrated or refused to co-operate in the sale of the Karen Property. The Respondent in her Replying Affidavit avers that following the death of the Deceased she has maintained the 'Karen Property' on her own without any input and/or contribution from the daughters of the Deceased. The Respondent explains that due to the normal bureaucratic delays in obtaining a bank loan to enable her get funds to purchase the property she was unable to pay the 4/5th required in time.
18. The Respondent maintains that the current offer of Kshs 200 million is below the market value of the property and asserts that she has identified buyers who are willing to pay a higher price. The Respondent urges the court to dismiss the current application.

Analysis and Determination

19. I have carefully considered the summons before this court, the Reply filed by the Respondent as well as the written submissions filed by both parties. The only issue for determination is whether the Attorney Administrator should be authorized to sell the Karen Property at the price of kshs 200 million.
20. Section 47 of The [Law of Succession Act](#) Cap 160 Laws of Kenya provides as follows:-

“The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.”
21. Similarly Rule 73 of the [Probate and Administration Rules](#) provide that-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
22. In light of the above provisions of law, I am satisfied that this court does have jurisdiction to grant the orders prayed for in this summons.



23. The parties herein have been going back and forth over the question of disposal/sale of the Karen Property since the year 2015. To date no compromise has been reached. The beneficiaries appear keen to sell off the property whilst the Respondent appears reluctant citing the fact that the offers received have been below market value.
24. It is common ground that the party herein entered into the Deed of Family Arrangement dated January 22, 2015. This Agreement set out modalities on the disposal of the Karen Property.
25. Paragraph 1 of the Second Schedule of the Deed provides as follows: -
 - “ 1. LR No 7583/44

Alia Naima wishes to retain this property. Therefore the property shall be valued by a professional valuer and thereafter she shall purchase the property at 4/5 of the market price. The sale proceeds shall be divided equally between the deceased’s four daughters. In the event that Alia Naima cannot afford to purchase the property, it will be put on the market and proceeds of the sale shall be divided equally among the five beneficiaries.
26. The terms of the Deed are clear and unambiguous and are not subject to any mis-interpretation whatsoever. It is appreciated the Respondent wishes to retain this property probably for its sentimental value. However, she cannot hold the other beneficiaries at ransom in her attempt to keep the property intact.
27. The Deceased herein passed away in August 2011. The Deed of Family Arrangement was entered into in January 2015. To date eight (8) years down the line an impasse remains regarding the disposal of this ‘Karen Property’.
28. It is desirable that the estate of the Deceased be fully settled in a timely manner. It is detrimental to the estate and to the beneficiaries for parties to continue to drag out the issue of the sale/disposal of this property.
29. The parties have not been able to agree on the true/genuine value of the suit property. In order to resolve this impasse, I direct that a valuation of the property be undertaken within forty (40) days by an independent valuer to be agreed upon by all parties. If no agreement is reached on a valuer then I direct that the Chief Government valuer conduct the valuation of this Karen Property. Costs of the valuation to be met by the estate.
30. Thereafter once the valuation is done the Respondent will have ninety (90) days to pay 4/5th of the valued priced. Should the Respondent fail to raise the required amount within ninety (90) days, then the Attorney Administrator is authorized to sell the ‘Karen Property’ to the highest bidder and the proceeds of sale shall be divided equally between the four (4) daughters of the Deceased and the Respondent
31. This being a family matter I make no orders on costs.

DATED IN NAIROBI THIS 10TH DAY OF FEBRUARY, 2023.

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MAUREEN A. ODERO

JUDGE

