



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1320 OF 2017

IN THE MATTER OF THE ESTATE OF PRISCILLA NYAMBURA KARINA (DECEASED)

RULING

1. The deceased herein Priscilla Nyambura Karina died intestate on the 26th of January 2015.
2. At the initial stage of the application for grant of letters of administration her children failed to agree on appointment of administrator, the matter went for mediation without success. However, the parties were later to agree and on the 20th of May 2019 a grant of letters of administration was issued to Caroline Wanjiku Njuguna and James Lewis Njogu.
3. On the 3rd of December 2015 the administrators moved the court for confirmation of the grant. With the consent of other beneficiaries, the mode of distribution was proposed. Item C in the schedule of assets relates to L.R NO. DAGORETTI/KANGEMI TOWNSHIP/451. The said property has attracted an objection from Strumech Engineering & Construction Limited through one of its directors Josephine Wanja Mwarangu to safeguard the company's interest based on a sale agreement between the company and the deceased.
4. It is not in dispute that on the 24th of November 2014 the deceased entered into a sale agreement with Strumech Engineering & Construction Limited for the purchase of the land in question for the sum of Kshs.16,000,000/- and a deposit of 10% being Kshs.1,600,000/- was paid to the deceased.
5. The objector is a director of Strumech Engineering & Construction Limited and it is her case that she paid a 10% deposit and advanced further sums to the deceased and/or her agents; in total she made an advance payment of Kshs.5,000,000/- and as such she ought to be allowed by the estate to complete the transaction with the terms and conditions in the sale agreement.
6. On the other hand, the administrators distance themselves from the Kshs.4,000,000/- said to have been advanced at different times to the deceased or her agents, further it is their case that the objector breached the terms of the agreement and therefore the property ought to be sold at the prevailing market value.
7. Having considered the pleadings and the submissions, the issues for consideration are:
 - a) *Whether the objector was in breach of the agreement between her and the deceased?*
 - b) *What are the sums that were advanced to the deceased and do the same form part of the purchase price?*
 - c) *Should the property be sold at the prevailing market value?*
8. The jurisdiction of this court is limited to matters pertaining to succession the above questions raised in the pleadings do not belong to a succession court and ought to be taken to the court with jurisdiction to handle land matters.
9. Therefore, in the interest of justice, I will direct that property No. DAGORETTI/KANGEMI TOWNSHIP/451 be removed from the schedule of assets for distribution until such a time that the issues between Strumech Engineering & Construction Limited and the estate will have been determined.
10. And so as not to delay the pending issues any longer the Objector is directed to refer the issue of the said property to the right court within the next 60 days of the date hereof.
11. The application for confirmation may be listed for hearing with the appropriate adjustment as directed in paragraph 9 above.
12. Each party to bear its own costs.

DELIVERED AND SIGNED AT NAIROBI THIS 10TH DAY OF JUNE, 2021.

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ALI ARONI

JUDGE