



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 350 OF 1998

IN THE ESTATE OF PIUS MAGERO GUMO – DECEASED

LUCY GUMO

ALICE GUMO

ANNA ADHIAMBO GUMO

MARY CATHERINE ODUOL GUMO

CHRISTINE KARAGANAI

EMELDA APIYO IMANDA

EMILY GUMO

ENRICO GUMO

FRANCESCA WAFULA

JULIA AKONA

JULLIETTA LUTTA

LILIAN MAGERO

NELLY OPENDA

ROSEMARY GUMO

SUSAN GUMO

WILFREDA GUMO.....APPLICANTS

VERSUS

MARGARET SIKUKUU GUMO.....1ST PETITIONER

OLIVER MAGERO GUMO.....2ND PETITIONER

RULING

This is a protracted Succession dispute - at least for now there appears to be light at the end of the tunnel. Applicants, who are the daughters of the deceased, have applied to this court for the following order:

“THAT this Honorable Court hereby distributes the commercial assets listed below by liquidating them and the proceeds be shared equally among the beneficiaries.

- a) LR No. 12138/7 Nairobi
- b) LR No. 209/1498/12 Nairobi
- c) LR No. 2116/30/10 Kitale Municipality
- d) LR No. 2116/20/10 Kitale Municipality
- e) LR No. 2116/7/IV Kitale Municipality

Shares

- f) Share certificate for 2196 shares A/C No. 002xxxxx
- g) Share certificate for 300 shares, Barclays Bank (K) Ltd.
- h) Share certificate for 1,155 shares Standard Chartered Bank A/C No. 008xxx.”

The application is supported by the annexed affidavit of Catherine Oduol Gumo. The application was not opposed by the majority of the beneficiaries. However, Charles Gumo swore an affidavit in opposition to the Application.

The plain reading of the application, the supporting affidavit and the replying affidavit clearly shows that there are some of the beneficiaries who are enjoying the status quo by collecting rents from the said properties. There is no evidence that upon collection of the said rent, the same has been distributed to all the beneficiaries. The administration of the estate of deceased's persons must inevitably come to an end. The beneficiaries cannot be joined in the hip by being tied to an undistributed property of the deceased in perpetuity; at some point all the properties of the deceased must be distributed to the beneficiaries irrespective of the wishes of some of the beneficiaries who wish to maintain the status quo.

In the present case, it was evident to this court that the time to wind up this estate has arrived. Part of the winding up process is to distribute the remaining assets that comprise the undistributed estate of the deceased to the beneficiaries. It is in light of the foregoing observation that this court agrees with the Applicants that the undistributed properties must be sold and thereafter the proceeds therefrom be distributed equally among all the beneficiaries.

To achieve this objective, this court issues the following orders:

- i) The said properties shall each be valued by a valuer to be agreed by the parties to this application. The cost of valuation shall be borne equally by the parties to the application.
- ii) After the valuation, the valuation report shall be submitted to court. The court shall ascertain the value after which any interested beneficiary shall have the first option to purchase the property. The purchase consideration realized from such sale shall be deposited in an escrow account to be maintained by the Advocates of the parties to this application.
- iii) If none of the beneficiaries shall be able to pay the ascertained purchase consideration, the remainder of the properties shall be advertised for sale and the same shall be sold in a public auction subject to the reserve price which shall be the ascertained value of the particular property.
- iv) The valuation exercise shall be undertaken and reports submitted to court within 45 days of today's date.
- v) Since this is a family dispute, there shall be no order as to costs.

DATED AT KITALE THIS 6TH DAY OF OCTOBER 2021.

L. KIMARU

JUDGE