



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**SUCCESSION CAUSE NO. E005 OF 2021**

**IN THE MATTER OF THE ESTATE OF OSCAR DUNCAN BEAUTTAH (DECEASED)**

**WINNIE CHIVENYO BEAUTTAH.....1<sup>ST</sup> ADMINISTRATRIX/APPLICANT**

**ELIZABETH WANJIRU GITHERE.....2<sup>ND</sup> ADMINISTRATRIX/APPLICANT**

**RULING**

**Brief facts**

1. The application for determination dated 19<sup>th</sup> July 2021 is brought under **Section 71(1) & (3) of the Law of Succession Act, Rule 40(1) and 73 of the Probate and Administration Rules** seeks for orders that grant of letters of administration be issued to the applicants and for leave to the applicants to execute the sale agreement and dispose of Land Parcel No. 3449/12 (Original Number 3449/6/1) situated in Nyeri before the statutory period of 6 months lapses for confirmation of grant.
2. The said application is not opposed.

**The Applicants' Case**

3. It is the applicants' case that this cause was filed on 29<sup>th</sup> March 2021 and gazetted pursuant to **Rule 7(4) of the Probate & Administration Rules** under Gazette Notice No. 4894 published on 21<sup>st</sup> May 2021. No objection was received upon the expiration of the thirty days and the applicants contend that their advocates on record then applied for issuance of the grant of letters of administration intestate.
4. The applicants state that they are the deceased's direct beneficiaries as their brothers George Njuguna Beuttah and James Oscar Beuttah are deceased but their children are listed under paragraph 4(c) and 4(d) of Form P&A 5 dated 23<sup>rd</sup> March 2021.
5. The applicants further pray that a partial confirmation order be issued to enable them dispose one of the properties in the estate to off set land rates on Land Parcel No. NYERI/MUNICIPALITY BLOCK III/26 in excess of Kshs. 101,923/-; to pay for liquor licence for hotel and bar business in excess of Kshs. 55,000/- to pay licence fees payable to the Tourism Board in excess of Kshs. 57,200/- and school fees for Betty Mumbi Beuttah in the amount of Kshs. 1,927,105/- and a further expense of USD 35,000 for Dash 8 Rating payable after attaining the current qualification. The applicants contend that the expenses are urgent for the protection and preservation of the estate as well as the upkeep of the deceased's dependants and cannot wait for the period of six months. Further, the applicants state that they have approached a potential purchaser for Land Parcel No. 3449/12 (Original Number 33449/6/1) but pursuant to **section 82(b)(ii) of the Law of Succession Act**, they need a court order to execute the sale agreement.
6. The applicants filed a further application dated 30<sup>th</sup> August 2021 stating in their affidavit that they are in urgent need of accessing funds to settle urgent needs as deponed in their affidavit dated 19<sup>th</sup> July 2021 and further that the 2<sup>nd</sup> applicant is undergoing treatment involving surgery and chemotherapy to the tune of Kshs. 600,000/- and that Betty Mumbi Beuttah cannot register for the next stage of pilot training because she has not paid fees to the tune of Kshs. 2,000,000/-. As such, the applicants urge this court to allow their application and aver to abide by the orders made by the court.

**Issues for determination**

7. After careful analysis, the main issue for determination is whether the applicants have satisfied the court that they deserve the orders sought for partial confirmation of the grant before the expiry of prescribed six months.

**The Law**

**Whether the grant ought to be confirmed partially before the expiry of 6 months.**

8. The court is empowered to make an order for early confirmation of grant under **Section 71 (3) of the Law of Succession Act** as follows:-

**The court may, on the application of the holder of a grant of representation, direct that such grant be confirmed before the expiration of six months from the date of the grant if it is satisfied-**

**a) That there is no dependant, as defined by section 29, of the deceased or that the only dependants are of full age and consent to the application;**

**b) That it would be expedient in all circumstances of the case so to direct.**

9. The Grant of Letters of Administration was made to the two administratrixes, who are daughters of the deceased, on 26<sup>th</sup> July 2021 and it has been three months since the grant was made in their favour.

10. The two applicants have sought early confirmation of grant citing the need for funds to pay school fees, pay outstanding land rates and overhead expenses, school fees and for medical treatment. It also state that the applicants have found a potential buyer in respect of Land Parcel No. 3449/12(Original Number 3449/6/1).

11. On perusing the application, I note that two sons of the deceased are deceased namely George Njuguna Beuttah and James Oscar Beuttah and the applicants have included their children in Form P & A5 as beneficiaries in place of the shares of their respective fathers. However, I note that although there is no pending application for dependency by any person, the beneficiaries of the estate and specifically the children of the two deceased sons of the deceased have not consented to the proposed partial distribution. In addition, I note that the applicants seek to pay school fees for one Betty Mumbi Beuttah, whose relationship with deceased has not been given. It is not clear whether she is a beneficiary or a dependant of the deceased. As much as I appreciate the reasons indicated by the applicants for the urgency in respect of the medical bills and the school fees, in my view, the applicants have an obligation to comply with the conditions set out under Section 71(3) of the Law of Succession Act.

12. It is my finding that the applicants have failed to meet the legal requirements under the law.

13. Consequently, I find this application lacking merit and it is hereby dismissed.

14. It is hereby so ordered.

**DELIVERED, DATED AND SIGNED AT NYERI THIS 11<sup>TH</sup> DAY OF NOVEMBER 2021.**

**F. MUCHEMI**

**JUDGE**

**RULING DELIVERED THROUGH VIDEO LINK THIS 11TH DAY OF NOVEMBER 2021**