



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

SUCCESSION CAUSE NO.597 OF 2012

IN THE MATTER OF THE ESTATE OF LATE MARGARET WANGARI NYAMBURA (DECEASED)

ROSEMARY NYAMBURA NGANGA

OLIVE NYAMBURA.....APPLICANTS

-VERSUS-

MACHARIA AYUB.....RESPONDENT

RULING

1. This is a ruling on application dated 29th May 2019. It seeks courts leave to sell **plot number T.49** within **LR No. 8569/6-Kahawa West Nairobi** by way of **public auction** pursuant to agreement dated 28th May 2018 between the applicants and the respondent.
2. It further seeks to allow **Tango Auctioneers** be public auctioneers and the plot to be advertised within 14 days in local dailies and for the sale to take place within 60 days. The application further seek to have proceeds of sale deposited in the firm of **Frank Mwangi & Co. Advocates** and auctioneer fees to be offset from the proceeds.
3. Grounds on the face of the application are that on 12th January 2015 certificate of confirmation was issued where the court directed that the property herein be valued and sold and proceeds shared equally between the applicants and respondent. That subsequently valuation was done by **M/S Applecross Valuers** at kshs.11,000,000.
4. That it was agreed that the respondent would buy out the applicants at kshs.5,500,000 being half value of the property. That since May 2018 the respondent has not complied with the agreement leading to this application.
5. In response the respondent filed replying affidavit dated 19th May 2019. He averred that the deceased was his wife for a period of 10 years before her demise.
6. He averred that following demise of the deceased, the applicants were appointed as personal representatives by **Judge Kimaru** in Nairobi and later the file was transferred to Nakuru to consolidate with the file in Nakuru.
7. He averred that upon consolidation, he expected to be appointed administrator of the estate with 2nd applicant. He further averred that he realized the confirmation of grant bears the name of 1st applicant and he is not mentioned as beneficiary.
8. He admitted that he entered into agreement of 28th May 2018 and that he has made payments of kshs.1,750,000 and stated that the applicant to suffer no prejudice if he is given more time to pay the balance as agreed. He attached banker's cheque.

ANALYSIS AND DETERMINATION

9. From averments of the parties herein ,there is no doubt that they entered into an agreement on 28th May 2018 for the respondent to pay applicants kshs 5,500,000 in respect to plot number **T.49** within **LR No. 8569/6**-respondent has confirmed that and stated that he has partly complied by paying kshs 1,750,000.
10. He indicated that he acquired a loan to pay the said amount. He has asked for more time to pay the balance but he has not specified the time he requires. In view of the fact that the amount already paid by respondent was from a loan and he has not indicated how long he requires to pay the balance or how he plans to acquire the money to pay, my view is that he is noncommittal on payment of the balance. He has not demonstrated any other means of getting the balance apart from sale of the property herein. There is no doubt that the applicant stand to be prejudiced by delay or uncertainty of time within which to pay the balance. I find the application meritorious. I will however give the

respondent time within which to pay the balance failure which the plot herein to be sold.

11. FINAL ORDERS

1. Respondent granted 60 days to pay applicants the full amount of **kshs 5,500,000**.
2. Failure to comply with order 1 above, plot T.49 to be sold by **Tango Auctioneers** to advertise the property in local daily and sell by public auction.
3. Upon sale of the property, deposit entitlement of the applicants with their Advocate and the respondent to be given his share.
4. Costs of this application to the applicants.

Ruling dated, signed and delivered at Nakuru this 6th day of February, 2020.

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF:

Jeniffer – Court Assistant

Ms. Ngugi for Applicants

No appearance for Respondent