



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 4 OF 2011**

MARIA GATTU JOSEPH.....1<sup>ST</sup> PLAINTIFF

ELIZABETH THAIRORA.....2<sup>ND</sup> PLAINTIFF

LUCY KINYA.....3<sup>RD</sup> PLAINTIFF

GABRIEL KUBAI KINGORI.....4<sup>TH</sup> PLAINTIFF

<VERSUS>

DOMINIC NTONGAI KINGORI.....DEFENDANT

TIMOTHY GACHANJA NGUNYANGI.....INTERESTED PARTY/APPLICANT

**RULING**

1. The Application coming for consideration in this Ruling is the one dated 23.4.2018 by the 1<sup>st</sup> Defendant/Applicant seeking the following orders:

**(i) THAT the Respondents do furnish the Defendant/Applicant with the detailed account of the proceeds of the sale of BLOCK x/x/x Pumwani (hereafter referred to as the suit property).**

**(ii) THAT Respondent and their Counsel be ordered to pay the Defendant/Applicant his share of the proceeds of the Suit Property**

2. The Applicant filed a Supporting Affidavit to the said Application sworn on 23<sup>rd</sup> April 2018 in which he stated that the Property was sold for Ksh.8,000,000 and the proceeds were to be distributed equally amongst the beneficiaries.

3. The Court gave an order on 30.11.2010 that the property be sold and the proceeds be divided amongst all the beneficiaries.

4. The 2<sup>nd</sup> Plaintiff/Respondent has filed two affidavits in reply to Application by the 1<sup>st</sup> Defendant/Applicant.

5. I have considered the Affidavits filed herein together with the submissions by both parties. My findings are as follows;

**(i) I find that it is not in dispute that the property in question was sold for Ksh.8,000,000/-.**

**(ii) It is also not in dispute that all the beneficiaries received payments from the sale proceeds.**

6. The issues this Court must determine are as follows:

**(i) Is the 1<sup>st</sup> Defendant/Applicant entitled to a further Ksh.300,000/- which he is demanding?**

**(ii) Who pays the costs of this Applications?**

7. On the issue as to whether the 1<sup>st</sup> Defendant/Applicant is entitled to the amount of Ksh.300,000/- which he is seeking, I find that the 1<sup>st</sup> Defendant/Applicant received Ksh.500,000/- from the breakdown furnished by the 2<sup>nd</sup> Plaintiff/Respondent in her Affidavit.

8. I find that the 2<sup>nd</sup> Plaintiff/Respondent has given a plausible explanation how the proceeds were utilized and why some funds were withheld by the purchaser and the Applicant has not rebutted the said assertions.

9. I find that there are beneficiaries who received much less than the Applicant and they are not complaining.

10. The Applicant was responsible for the reduction of the funds by refusing to vacate the suit premises and he cannot be allowed to benefit from this wrong doing.

11. The Applicant has no right to complain about the share given to the widow as she has first priority in the Estate.

12. I find that the Applicant's Application dated 23.4.2018 has no merit and I accordingly dismiss it.

13. Since this is a family matter, I direct that each party bears its own costs of this suit.

**DELIVERED, SIGNED AND DATED IN OPEN COURT THIS 3<sup>RD</sup> DAY OF MAY, 2019**

**ASENATH ONGERI**

**JUDGE OF THE HIGH COURT OF KENYA, NAIROBI**