



**REPUBLIC OF KENYA**

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

**COMMERCIAL AND ADMIRALTY DIVISION**

**WINDING UP CAUSE NO. 10 OF 2007**

**IN THE MATTER OF THE COMPANIES ACT CAP. 486 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF WINDING UP OF NYAKIO INVESTMENTS LTD**

**ALICE WANJIRU WAGAKO.....APPLICANT**

**VERSUS**

**STEPHEN KARANJA WAGAKO.....1<sup>ST</sup> RESPONDENT**

**GABRIEL MUTURI WAGAKO.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. Before me is the **Notice of Motion** application dated **10<sup>th</sup> December 2019**. The application is brought by Alice Wanjiru Wagako. The applicant seeks orders for review of the decree of this court by extending from 6 months to 36 months the period to sell immovable property owned by the company the subject of this winding-up proceedings; for an order that the rent proceeds be divided amongst three households as ordered in Nairobi High Court Succession Cause No. 1871 of 2002; and that the first household be paid Ksh 2,609,052 before the distribution of the said rent.

2. In summary the background of this matter is that the company, the subject of this winding up, is Nyakio Investment Limited. The shareholders of that company are members of three households. The company is the registered owner of two immovable properties namely L.R.No. 209/1496 Nyakio House River Road and L.R. No. 209/2211/2 2<sup>nd</sup> Avenue Parklands Nairobi. On 15<sup>th</sup> December 2009 the company was placed in interim liquidation. Consequently the official receiver took over the renting of the immovable properties. This winding up on being compromised by an order by consent of all households, on 26<sup>th</sup> September 2016, the three law firms in this matter opened a joint account where the rental income in the hands of the Official Receiver was deposited. The credit balance in that account as at 29<sup>th</sup> September 2018 was Ksh 34,419,231.10. The rental income of the properties continues to be deposited in that account.

3. The consent recorded in court on 26<sup>th</sup> September 2016 provided that the immovable properties be sold within 6 months, now past, and the sale proceeds be deposited in the joint account. It is that period the applicant seeks extension of since the properties have failed to attract good selling price.

4. The applicant also stated that on the court confirming the grant in succession cause no 1871 of 2002 the three households has requested for the release, to them, of the money held in the joint account.

5. The application is not opposed by any party, on its merit. It is however opposed by John Mwangi Wagako, the brother of the applicant. He and the applicant are from the same household. He opposes the application on two basic grounds: that the law firm of Kamau Kuria & Co Advocates, who previously acted for him in this cause, will be conflicted if it continues to act for the applicant; and that the applicant is not a party in this action and therefore has no capacity to bring the application.

### **ANALYSIS**

6. As the title of this action will show this is a winding up action. On 26<sup>th</sup> September, 2016 parties recorded consent orders as discussed above and in addition to the orders referred above recorded an order that this matter be marked as settled.

7. Now if this suit is settled and all that which is awaited, before this file is closed, is the sale of the properties how can John Mwangi Wagako be prejudiced by the firm of Kamau Kuria & Co. Advocates acting for his sister. There is nothing outstanding for determination to which a claim of prejudice can be laid. I therefore reject that ground of objection.

8. The second objection is also rejected. It is common ground that the shares in Nyakio Investment Ltd are held jointly by three households. The applicant comes from one of those households. The properties owned by Nyakio Investment Ltd were on 26<sup>th</sup> September 2016 ordered to be sold and the proceeds be divided amongst the three households. I therefore find and I hold Alice Wanjiru Wagako has an interest in this matter and is therefore a person who has capacity to bring the present application.

9. Since the objection to the application did not touch on its merit I do find that the orders sought are necessary in order to ensure the consent order of 26<sup>th</sup> September 2019 is actualized.

### **CONCLUSION**

10. I grant the following orders:

*a. That this court does hereby review clauses 2(g), 6 and 7 (c) of the decree issued herein on 3<sup>rd</sup> November, 2016.*

*b. That to that end this court does hereby to extend from 6 months to 36 months the period in which the sales of LR No 209/1496 Nyakio House River Road and LR No. 209/2211/2-2<sup>nd</sup> Avenue Parklands Nairobi are to take place.*

*c. That this court does hereby order that pending the sale of LR No 209/1496 Nyakio House River Road and LR No 209/2211/2-2<sup>nd</sup> Avenue Parklands Nairobi as ordered in this cause on 26<sup>th</sup> September, 2016, the rent yielded by the same to date and held in joint accounts opened by three law firms representing the parties, be paid to the three houses of the late Wagiko Ndibaru in accordance with the 1/3 principle contained in the ruling delivered on 4<sup>th</sup> February, 2009 in Nairobi High Court Succession Cause No. 1871 of 2002: In the matter of the Estate of Wagiko Ndibaru (Deceased) after part payment of the costs due to the said three law firms.*

*d. That this court does hereby order that the Kshs 2,609,052 payable under clause 7(c) of the said decree to the first house, be paid before distribution of the rent as per clauses 2(f), (g) and (6).*

*e. That there shall be no order as to costs in respect to the Notice of Motion dated 10<sup>th</sup> December 2018.*

**DATED, SIGNED and DELIVERED at NAIROBI this 5<sup>th</sup> day of November , 2019.**

**MARY KASANGO**

**JUDGE**

***Ruling read in open court in the presence of***

Sophie .....Court clerk.

.....FOR THE APPLICANT

.....FOR THE RESPONDENTS