



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO.95 OF 2012**

**IN THE MATTER OF THE ESTATE OF SALIM PREMJI VIRJI (DECEASED)**

**AMIN MOHAMED ISMAIL.....APPLICANT**

**VERSUS**

**KARIM BOGHA .....RESPONDENT**

**RULING**

1. The deceased Salim Premji Virji died intestate on 20<sup>th</sup> May 2009. The grant of letters of administration in respect of his estate was issued to Karim Bogha (the respondent) and Amin Mohamed Ismail (the applicant) on 7<sup>th</sup> February 2013 and confirmed on 19<sup>th</sup> May 2015. The estate of the deceased has already been distributed among the beneficiaries, except for a property known as Flat No. 58 on L.R. No. 209/5558- Platinum Housing Co-operative Society Limited, Ngara which is yet to be sold and thereafter the proceeds distributed among the beneficiaries.

2. The applicant brought the present application dated 5<sup>th</sup> October 2017 seeking for an order that:

- a) the deceased's asset known as Flat No. 58 on L.R. No. 209/5558 Platinum Housing Co-operative Society Limited, Ngara, Nairobi be sold;
- b) should Karim Bogha decline to sign the sale documents, the applicant be allowed to execute all the documents in respect of sale of L.R. No. 209/5558- Platinum Housing Co-operative Society Limited, Ngara, Nairobi on behalf of the administrator; and
- c) the proceeds of the sale of the said property be received by M/S Shabana Osman & Associates Advocates on behalf of all the beneficiaries and subsequently on completion of the sale to be distributed to the beneficiaries and or their administrators as per their bequeath.

The application was based on the grounds that the estate is at the risk of being wasted due to lack of cooperation of the respondent who is one of the administrators despite all efforts being made to amicable distribution of the state; that the beneficiaries have received an offer from serious buyers and hence without the court's intervention the beneficiaries are unable to sell the properties despite all interested parties being keen to dispose of the deceased's estate; and that he beneficiaries are unable to safeguard, distribute, deal and are at risk of their interests and entitlement being affected unless the orders are granted. The application was supported by the affidavit of the applicant dated 11<sup>th</sup> September 2017.

3. The application was opposed by the respondent through his replying affidavit dated 11<sup>th</sup> December 2017. He stated that he did not dispute that the beneficiaries want the property sold, but that he believed it was his duty as an administrator of the deceased's estate to act in a prudent way and get the best price available. In his opinion, the property could fetch better price. He filed a valuation report dated 24<sup>th</sup> April 2018 which valued the property at Kshs.8,600,000/=.

4. Both parties filed their submissions which I have considered. I note that both administrators are in agreement that the property be sold and the proceeds distributed among the beneficiaries. Although the applicant accused the respondent of non-cooperation and refusal to sign the transfer documents, it is the respondent's position that he wished to sell the property for a better price than what was being proposed by the applicant. I have seen the valuation report filed by the respondent dated 24<sup>th</sup> April 2018. According to the report, the current market value of the property is Kshs.8,600,000/=. I have also looked at the sale agreement filed by the applicant in which the property was to be sold for Kshs. 8,500,000/=. Although the respondent produced a valuation report valuing the property at Kshs.8,600,000/=:, he did not

demonstrate that there was an available buyer for the price in the valuation report. The applicant on the other hand has a ready buyer, willing to buy the property for a decent amount, only Kshs.100,000/= less than the market price. I do not see the point of putting off the sale any longer in anticipation of a future buyer who is not known.

5. It is for this reason that I allow the present application. I direct that the property in question be sold immediately to the identified buyers. The respondent shall execute the sale documents immediately. If the respondent fails to execute any documents related to the sale and transfer of the property within 14 days, the documents shall be forwarded to the Deputy Registrar for execution on his behalf.

6. This being a family dispute, each party shall bear their own costs.

**DATED and SIGNED at NAIROBI 11<sup>TH</sup> OCTOBER 2018**

**A.O. MUCHELULE**

**JUDGE**

**DATED and DELIVERED at NAIROBI 17<sup>TH</sup> OCTOBER 2018**

**J.N. ONYIEGO**

**JUDGE**