



REPUBLIC OF KENYA
IN THE HIGH COURT KENYA AT MIGORI
SUCCESSION CAUSE NO. 10 OF 2016

IN THE MATTER OF THE ESTATE OF JAMES CHAZIRA MULUSO (DECEASED)

-BETWEEN-

LILIAN IMARI MAHIRA

VIOLET AFANDI AVUNDIKU.....ADMINISTRATORSS/APPLICANTS

-AND-

KENYA COMMERCIAL BANK LIMITED, MIGORI BRANCH...NECESSARY PARTY

RULING

1. This ruling arises from the position taken by the Kenya Commercial Bank Limited, Migori Branch (hereinafter referred to as '**the Bank**') on its procedure in respect to discharging a charge over a property which was charged with the Bank by the proprietor before the demise of the said proprietor.
2. According to the Bank, no Discharge of Charge can be registered over the property even after all the secured obligations (which include the full repayment of the loan) are fully met by the Administrator(s) of the estate of the deceased proprietor. The Bank insists on the confirmation of the grant first before it can lodge a Discharge of Charge over such property.
3. This Court holds the contrary view. The confirmation of grants in Kenya is strictly governed by the **Law of Succession Act**, Chapter 160 of the Laws of Kenya (hereinafter referred to as '**the Act**') and the **Probate and Administration Rules 1980** (hereinafter referred to as '**the Rules**'). **Section 55** of the Act provides that no grant of representation, whether or not limited in its terms, shall confer any power to *inter alia* make any division of any property forming part of the estate of a deceased person unless that grant has been confirmed in accordance with **Section 71** of the Act.
4. **Section 71** of the Act provides that no grant of representation shall be confirmed until and unless all the identities and shares of all those beneficially entitled to the estate have been ascertained. That position is also provided for under **Rule 41** of the Rules.
5. When a grant of representation is issued by a Court, the administrator(s) named in the grant is/are charged with the duty to consolidate all what makes up the estate; that is including the assets and liabilities. When an asset, say a parcel of land, is charged as a security over a loan advanced by a financial institution, that property becomes encumbered and the security becomes a liability over that land or the estate of the proprietor if the proprietor dies before discharging the property as the case may be.
6. Upon the administrators ascertaining the assets and liabilities of an estate of a deceased person, they

still remain under a duty to ensure that all the liabilities over that estate are fully liquidated. In the case of a property used to secure a loan in a financial institution, the administrators must first ensure that the same is fully discharged. To that end, the administrators can even take out any form of proceedings. Once all the liabilities are well taken care of, the administrators must then proceed on to deal with the net estate. The administrators must identify and ascertain the shares of all those who are beneficially entitled to the estate and then proceed on to apply to the Court to confirm the grant of representation.

7. In this matter, the deceased herein, **JAMES CHAZIRA MULUSO**, charged his property known as **SUNA EAST/KAKRAO/3179** (hereinafter referred to as **'the Property'**) with the Bank over a loan. The deceased however died before repaying the loan. The two wives of the deceased, **LILIAN IMARI MAHIRA** and **VIOLET AFANDI AVUNDIKU** applied for and were successfully granted the administration of the estate of their husband. That was on 06/05/2016.

8. By an application evenly dated and filed on 14/11/2016, the two administrators applied to confirm the grant. When the application came up for hearing before this Court, it was found out that the property was still encumbered in favour of the Bank and as such the confirmation of the grant was declined. Although the administrators informed the Court that they had fully repaid the loan to the Bank, the Court nevertheless directed the administrators to, firstly, ensure that the property is discharged before the hearing of the application for confirmation could proceed further.

9. When the matter came up in Court later on, the administrators informed the Court that the Bank had insisted that the grant was to be first confirmed before it can discharge the property. That led to the summoning of the Bank where the Bank truly reiterated its said position. The Bank further confirmed that the Administrators had fully repaid the loan and the Bank had no any interest over the property save the confirmed grant.

10. This Court believes that it has clearly and elaborately laid down the law as it should apply in the circumstances of this case. Consequently, the following orders do issue: -

a. This ruling together with a duly extracted Order thereof shall be served upon the Kenya Commercial Bank Limited, Migori Branch within 2 days of this ruling;

b. The Kenya Commercial Bank Limited, Migori Branch shall, upon service, proceed to forthwith discharge the property known as SUNA EAST/KAKRAO/3179 and hand over the document of title to the Administrators in this cause within 30 days of the said service;

c. The Administrators are hereby granted leave to file a Further Affidavit which will contain an official search on the then most current position of the property preferably after 35 days of this ruling;

d. The hearing of the application for confirmation of the grant is hereby fixed on 05/06/2017.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 04th day of April 2017

A. C. MRIMA

JUDGE