

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

SUCCESSION CAUSE NO. 1232 OF 2010

IN THE MATTER OF THE ESTATE OF P S K (DECEASED)

RULING

1. The deceased herein P S K died on 4th day of July, 2008 leaving behind a widow by the name of M W K and two children namely A T K (a son) and S S K (a daughter) then aged 15 years and 8 years respectively. On 18/6/2010, M W K and Reuben Kangethe Muchai jointly petitioned for a grant of letters of administration intestate which was issued on 27th January, 2011 and confirmed on 14th May, 2012.

2. During confirmation, LR No. [Particulars withheld] was given wholly to the widow M W K and LR No. [Particulars withheld] held in the name of M W K in trust for A T K and Stacy Soila Kishoyian. Unfortunately, A K died on 6/3/2014 after committing suicide inside their house while aged 20 years.

Pursuant to the demise of one Alvin being one of the beneficiaries, the mother (applicant) filed an application dated 13th June, 2017 seeking leave to dispose off by way of sale the property L.R. No.[Particulars withheld] registered in her name in trust for A T K (now deceased) and S S K (now aged 17 years) so as to enable the applicant buy some property being L.R. No. [Particulars withheld] for the use of her surviving daughter S S K.

3. Application which is filed under Sections 37 and 47 of the Law of Succession Act is premised on grounds on the face of it and a supporting affidavit deposed by the applicant M W K on the 13th June, 2017. In her affidavit in support, the applicant cited three grounds for disposal of the property in question as: the need to move out of the premises in which her son committed suicide so as to forget the incident and get rid of mental anguish, fear and trauma associated with the act; that the property she intends to buy is valuable and of economic significance to the beneficiary and lastly; the daughter is in need of school fees at [Particulars withheld] School which she intends to join.

4. The applicant attached a copy of proposed sale agreement in respect of the property she wants to buy with the consent of the beneficiary thus persuading the court to consider her request now that they are no longer staying in the house where her son committed suicide. In submission, Mr. Wakaba for the applicant relying on the affidavit in support orally urged the court to consider the application in the interest of justice and for the benefit of the beneficiary who is still a minor.

5. I have considered the application herein, affidavit in support and submissions by counsel for the applicant. A perusal of the court records reveals that, the applicant herein is a joint administrator of the estate with one Reuben Kangethe Muchai. There is no evidence on record to show that Reuben ceased being co-administrator. In the instant application, Reuben is not one of the applicants nor did the applicant swear the affidavit in support on her own behalf and that of Reuben. In the absence of the co-administrator's consent, the application cannot stand as the interest of the minor who has no capacity to consent will not be taken care of adequately.

6. Secondly, one of the beneficiaries the late A T having died aged 20 years, he is deemed to have left an estate capable of being succeeded hence the need to either file a separate succession cause to have his interest removed or disposed off or simply replace his beneficial interest with another beneficiary. Equally, I have also considered the fact that Stacy is still a minor aged 17 years old hence has no capacity to consent. Although under Section 37 and 47 of the Law of Succession Act the court has power to grant consent in case of a minor beneficiary and where immovable property is involved, the same discretion must be exercised cautiously. In this case, Stacy's interest is tied to that of her late brother which

therefore means the resulting trust in respect of a minor herein has to be separated from that of her deceased brother A T before disposal.

7. To allow the application in its current form and manner as pleaded, will amount to a short cut thereby disposing a share of a deceased person without following due process. Lastly, the applicant can wait a little longer until Stacy who is 17 years now attains 18 years so that she can sell the property in question and do whatever she wants with it.

8. For the above reasons stated, application herein is dismissed with no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF JULY, 2017.

J.N. ONYIEGO

(JUDGE)

In the presence of

.....Counsel for the applicants