



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 6 OF 1992

IN THE MATTER OF THE ESTATE OF THE LATE NZIOKA WAMBUA (DECEASED)

PAUL ITOTIA DAVID.....1ST PETITIONER

MUTHIO NZIOKI.....2ND PETITIONER

RULING

1. On 15th November 2010, the following consent orders were recorded –

“1. The Petitioner to file and serve a summons for confirmation of grant within 45 days of today.

2. The Objector in her turn may file and serve an affidavit of protest within 14 days of service.

3. For the avoidance of doubt, the summons to confirm grant shall not include the disputed property, L. R. Mavoko Town/Block 2/3.

4. Directions regarding the disputed property shall be given after distribution of the Deceased’s undisputed free property.

5. Further direction on 07/02/2011.

6. Costs in the cause.”

2. On 13th February 2013, the court gave the following directions: that parties do agree on the number of properties not reflected in the aforestated consent.

3. It seems the parties failed to agree on the list of the aforestated properties as they filed affidavits and written submissions.

4. The 1st Administrator listed the following properties:

(i) MAVOKO TOWN/BLOCK 2/03

(ii) MAVOKO TOWN/BLOCK 21/04

- (iii) MAVOKO TOWN/BLOCK 12272
- (iv) MAVOKO TOWN/BLOCK 12088
- (v) MAVOKO TOWN/BLOCK 12316
- (vi) MAVOKO TOWN/BLOCK 12392

5. The 1st Administrator referred to the following documents in support of his case:-

- Succession Cause No. 5 of 1992 filed by the 2nd Administrator who listed the properties of the deceased as including MITABONI-KATANI CO LTD shares No. 002013 and 001003.

- Letter dated 23.1.2012 from F. M. Mulwa Advocate addressed to P. K. Mutai & Co. Advocates stating that Plots No. 12088, 12272, 12316 and 12396 registered in the name of MITABONI-KATANI CO. LTD belonged to the deceased, Nzioka Wambua, a shareholder of the company.

- A copy of the minutes of the elders meeting held on 3.6.1989 which reflected the estate of the deceased as comprising of 70 acres of land and four plots at KATANI and 13 acres at home.

- A copy of the minutes of the elders meeting held in 17/1/1996.

6. The 1st Administrator contended that it was the deceased who bought the shares in question as the deceased was an employee of Kenya Breweries Ltd while the 2nd Administrator was a housewife.

7. On the other hand, the position taken by the 2nd administrator is that she is the one who is a member and a shareholder of MITABONI-KATANI CO. LTD. That she has been a member since the year 1979 with 300 shares as a per share certificate No. 49 which is exhibited. The 2nd Administrator further stated that she used to send the deceased as her husband to attend meetings and collect her dues, hence the reflection of the deceased's name on the list for reimbursement of transport expenses.

8. The 2nd Administrator also exhibited a letter dated 12th March 2010 written by the chairman, MITABONI KATANI CO. LTD which reflects that she is the allottee of land parcel No. MAVOKO TOWN BLOCK 2/3 and MAVOKO TOWN BLOCK 2/104. It was further stated that there was an error in the inclusion of plots No. 002012 and 001003 in the petition as properties of the deceased. That it is also erroneous to state that the plots No. 12088, 12272, 1234 and 12392 belonged to the estate of the deceased.

9. It is common ground that the disputed properties are:

- (i) MAVOKO TOWN/BLOCK 2/03
- (ii) MAVOKO TOWN/BLOCK 21/04
- (iii) MAVOKO TOWN/BLOCK 12272
- (iv) MAVOKO TOWN/BLOCK 12088
- (v) MAVOKO TOWN/BLOCK 12316
- (vi) MAVOKO TOWN/BLOCK 12392

10. It is also common ground that the aforesaid properties are in the name of the 2nd Administrator. These properties are not free properties of the deceased as envisaged by Section 3 of the Law of

Succession Act, (Cap. 160, Laws of Kenya).

Although the parties have submitted on whether the 2nd Administrator is an intermeddler in the estate by transferring the said properties to herself following the demise of the deceased or whether the properties belonged to the 2nd Administrator, that is not the matter before this court at this stage.

11. The issue before the court at this stage is to simply state which properties were meant to be the disputed properties covered by the consent entered by the parties on 15.11.2010. The disputed properties are the aforestated six properties.

12. Consequently, as per the aforestated consent orders, the summons for confirmation should not include the said six properties.

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B. THURANIRA JADEN

Dated and delivered at Machakos this 7th day of May, 2015

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B. THURANIRA JADEN

JUDGE