

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 1107 OF 2003

IN THE MATTER OF THE ESTATE OF

SULEIMAN ONYANGO OUMA (DECEASED)

AND

IN THE MATTER OF AN APPLICATION BY JOSEPHINE CHEPKOECH

RULING

1. The deceased SULEIMAN ONYANGO OUMA died intestate on 18th December 2002 in Nairobi. The grant that was issued was confirmed to the applicant, JANE MACBETH and FLORENCE ATIENO OKEYO. In the certificate that was issued on 3rd December 2007 the two minor daughters of the deceased namely SHEILA KIWATSU OUMA and STELLA KIKA OUMA were ordered to each receive 50% of undivided share of all parcel subdivision No. 8370 (original No. 304/46) section 1 Mainland North – Mombasa and insurance policy No. 171946/0 held at Jubilee Insurance Company. The applicant, with the consent of the other administrators, on 10th June, 2011 entered into agreement to sell this parcel of land to BENSON THIONGO MUTHAMA and KHADIJA HAMISI MADA for Kshs.1,950,000/=. They state that they were seeking to have the proceeds used to invest in Nairobi for the benefit of the two minor children.
2. It is not in dispute that a similar application was made by the administrators and refused in a ruling delivered on 10th November 2011. At that time, the administrators were saying that they intended to use the proceeds to buy 3 plots measuring 1/8 of an acre each in Mavoko town. The court observed that:-

“There is no plausible reason advanced in paragraph 8 of the affidavit sworn on 13th October 2011 by the widow for the intended sale. It is not shown how the beneficiaries will stand to gain by selling a developed property in exchange of an underdeveloped plot...”

The court was not amused by the fact that the applicant had entered into the sale without the sanction of the court and was only coming for it later after being unsuccessful with the transaction.

3. The applicant states that her previous advocates had failed to advise her that she needed court’s permission to sell the plot. She also explained that the plot was in fact not developed.
4. During the confirmation of the grant, the applicant was given only a life interest in this property. She works at Kenya Airways and has her own properties which she says will benefit the minors ultimately. This court has the responsibility to protect the legacy of these minors. They have to be allowed to grow until they are of age to be able to make an election on what to do with the legacy. The applicant had the opportunity to persuade the Court on the need to deal in this property, but was unsuccessful. There is no new evidence that is being placed before court that could not be reasonably obtained. There is no mistake or error that is sought to be corrected by this court. In fact, the push to sell this property when the applicant is able to raise money to buy or

develop whatever properties is suspect. I will not allow the application.

DATED and DELIVERED at NAIROBI this 1st October 2014.

A.O. MUCHELULE

JUDGE