

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NO. 15 OF 1994

IN THE MATTER OF THE ESTATE OF THE LATE EDINA TSIYELI

ZIPPORAH ONZERE.....PETITIONER

VERSUS

SAMMY MAVALAH.....OBJECTOR

RULING

The application dated 16/1/2014, was filed by the petitioner herein Zipporah Onzere who prays that the respondent Sammy Mavalah be directed to vacate the property of the estate of Edina Tsiyeli to allow it to be sold so that all the beneficiaries can share the proceeds therefrom as ordered by this court. The application is based on grounds that this court directed that the deceased's property do vest upon the four beneficiaries in equal shares and that the respondent do have the first option to buy off the other beneficiaries or in the alternative the same be sold and the proceeds be hared equally; that the court ordered that a valuation be done and a valuation report was prepared Ex.1, 2(a) & (b); that the respondent was given the first opportunity to purchase it but has failed to pay off the other beneficiaries and that he has been violent and chased away any people interested in viewing the property for purposes of purchasing it. That is what has necessitated this application.

The application was opposed by the objector who swore an affidavit dated 26/3/2014, in which he admits that indeed the court ordered that the four beneficiaries share the property in equal shares and that he was given first priority to purchase it but he had no money; that he has now obtained a bank loan of Kshs.970,000/- as per the valuation report and he denies having chased away any prospective purchasers. He claims to have secured finances and is ready to pay off the other beneficiaries save that he has incurred other expenses in terms of rates, loan, water, building expenses all totaling Kshs.506,521/-. He prays that the application be dismissed and he be allowed to buy off the other beneficiaries.

J Koome delivered her judgment on 9/5/2008. Thereafter a valuation report was prepared, dated 27/4/2010, in accordance with the court's judgment. In the judgment, the court noted that the objector was benefiting from the rental income from the property which had to be taken into account, the sums paid by the objector to the NHC and rates to the Municipality Council of Nakuru and the net proceeds were to be shared equally.

Although the objector was given first option to purchase the said property, it is 6 years since the court's order and there is no evidence that he has made any efforts to comply. The objector deponed that he ha obtained a loan and wishes to purchase the property but he did not exhibit any evidence of the said intention e.g. an application to the bank and an offer made by the bank. He has listed the expenses he has allegedly incurred over rates and the loan but the court clearly directed that the rental income he has made from the property should be taken into account. He should demonstrate how much he has earned as rents so far before the other expenses can be considered . The objector did not exhibit any evidence to prove the said expenses. In any event, before the sale the onus is upon the objector to demonstrate what he has earned from the plot and other expenses incurred to enable the beneficiaries share the net proceeds from the property. Even if the applicants have not brought any proof that prospective purchasers were chased away by the objector, yet the lapse of 6 years since the court's order is itself indicative that the objector has no intention of moving out of the property or honouring the court's order.

For the above stated reasons, I will allow the application by the petitioner and direct that the objector is

allowed 90 days within which to complete the purchase of the said property if at all, in default, the objector be evicted from the said property without any further recourse to the court. If he is evicted and the property sold, and the objector declines to sign any transfer documents, the same to be signed by the Executive Officer of this honourable court. Each party to bear its own costs this being a family matter.

DATED and DELIVERED this 1st day of October, 2014.

R.P.V. WENDOH

JUDGE

PRESENT:

Mrs Ndeda for the petitioner

Absent for the objector

Kennedy – Court Assistant