



IN THE MATTER OF THE ESTATE OF HEZEKIAH MATHARA GATHENDE - DECEASED

RULING

This is an application by way of Summons dated 20th November, 2008 filed by M/s Mwicigi Kinuthia & company advocates for the applicant **ROSE NYAMBURA THUMBI**, the administrator. The application was filed under section 82 (b) (ii) of the Law of Succession Act (Cap. 160) and Rule 43 and 73 of the Probate and Administration rules. The order sought is as follows-

- 1. THAT this court do grant the Administrator Rose Nyambura Thumbi permission to sell 2 acres of deceased's land reference number Gatamaiyu/Kagaa/272 before confirmation of grant and to appropriate money in deceased's Bank account number 155-20-3479 at Kenya Commercial Bank Githunguri being shillings 50,631/= to pay for legal costs and court costs in filing a civil suit for eviction against Mary Wanjiru Njuguna now occupying deceased's land reference number Gatamaiyu/Kagaa/272 and in defending the deceased's estate in Nairobi Court of Appeal, (appeal No. 8 of 2007) and in prosecuting this succession case."***

The application was filed with an affidavit sworn by the applicant on 20th November, 2008. The said affidavit gives the facts and circumstances of the application. There was also filed a further affidavit sworn by the applicant on 22nd July, 2009. This affidavit has annexures

such as a valuation report dated 25th June, 2009 done by Peter W. Kanyungo BA (Land Economics) MISK. According to the Valuation report, the whole plot freehold interest L.R. No.

measuring 19.5 acres is valued at Kshs.9,050,000/=, with 5 acres of same under tea valued at Kshs.3,250,000/=. The plot is in the registered name of **HEZEKIAH MATHIRA GATHENDE (*the deceased herein*)**.

Also filed with the said further affidavit is an annexure dated 30th June, 2009, which is a consent of the beneficiaries, who are 12 in number.

The application does not appear to be opposed. On the hearing date, Mr. Kinuthia for the applicant addressed me in support of the application.

I have considered the application, documents filed as well as the law.

I will not grant the prayer for disposal of the land assets. This is because section 82(b) (ii) of the Law of Succession Act (**Cap. 160**) specifically prohibits such a sale before confirmation of grant. It provides as follows-

“82(b)(ii) no immovable property shall be sold before confirmation of the grant.”

In my view, the above provisions of the law leave no room for discretion of the court. I have not been referred to any section of the law that gives to the court discretion to allow a sale of land assets before confirmation. I have also not been told that the grant issued by the court on 17th January, 2003 has been confirmed. On the prayer

for withdrawal of money from the bank account, I will grant the same under section 47 of the Law of Succession Act, since there is no specific prohibition under the Act. I will therefore grant an order as requested.

Consequently, and for the above reasons, I grant the administrator authority or permission to appropriate money in the deceased's Bank account number 155-20-3479 at Kenya Commercial Bank Githunguri being Kshs.50,631/= to pay for legal costs and court costs as requested.

It is so ordered.

Dated and delivered at Nairobi this 1st day of March, 2010.

George Dulu
Judge.

In the presence of-

Mr. Kinuthia for the applicant

David Mutisya court clerk.