



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Succession Cause 500 of 1997**

**IN THE MATTER OF THE ESTATE OF THE LATE KIBOWEN KOMEN**

**WILLIAM KIPROP KOMEN.....PETITIONER**

**VERSUS**

**RACHEL KIPNGENO KOMEN.....OBJECTOR**

**RULING**

The applicant herein, Agrisup Limited, filed an application by way of a chamber summons under the provisions of Sections 47, 51, 66, 74, 83 and 86 of the Law of Succession Act Cap 160 and Rules 7(d), 16 and 49 of Probate and Administration Rules. It urged the court to rectify the petition for grant of letters of administration to reflect as a liability due and owing from the deceased's estate a sum of Kshs.3,090,000/- received by the deceased from the applicant as a deposit towards purchase of a parcel of land from the deceased prior to his demise.

The applicant also prayed that the grant of representation to the estate of the deceased be assigned to person(s) in the discretion of the court, considering the petition herein, all the beneficiaries to the estate, the circumstances of the petition and the fact that the deceased's estate has remained unmanaged by a formal administrator since 15th February 1997 thereby exposing the estate to waste.

The applicant further urged the court to give directions as to how the applicant's claim could be secured from the deceased estate and also directions as to the preservation, administration and management of the deceased's estate to prevent waste of the same.

The application was supported by an affidavit sworn by Terry C. Maina, a director of the applicant company and was made on the grounds that the deceased received a sum of Kshs.3,090,000/- from the applicant as a deposit towards purchase of a parcel of land measuring 185 acres that was to be excised from his land parcel L.R. No. 10684 in Njoro and that the beneficiaries of the deceased's estate were aware of that liability. However, since his demise there had been no one administering his estate and it was in danger of waste to the detriment of the applicant's claim.

The petitioner, William Kiprop Komen opposed the application and filed an affidavit sworn on 18th May, 2004. He said that he was aware that his deceased father had entered into a sale agreement with the applicant for sale of the said property but according to him, the deceased had received only

Kshs.1,295,000/- as a deposit towards the purchase price thereof but not Kshs.3,090,000/- as alleged by the applicant. He therefore stated that the applicant should prove its claim at the hearing of the petition and denied that the deceased's estate was being wasted. He had on the 4th of October, 2004 filed a notice of amendment to his petition and indicated that the deceased estate had a liability of Kshs.1,295,000/- on account of the aforesaid deposit. Miss Mathenge for the petitioner stated that the deceased's estate was worth over Kshs.50 million and that whatever amount that would be found to be due and payable to the applicant would be paid before the estate is distributed amongst the various beneficiaries.

The other parties herein supported the view of the petitioner and also urged the court to dismiss the application.

The applicant is basically a creditor of the estate of the late Kibowen Komen. That is not denied by all the other parties. What is in dispute is the amount that is due and owed to it. While the applicant says that the amount owed to it is Kshs.3,090,000/- the petitioner says that it is Kshs.1,295,000/-. Whatever amount it is, that claim can only be established upon hearing viva voce evidence when the petition and the other pending applications will be listed for hearing. It would be improper for this court to order a rectification of the petition for grant of letters of administration to reflect the applicant's claim of Kshs.3,090,000/- as a liability. It is sufficient that the petitioner and the beneficiaries of the estate of the deceased acknowledge that a certain amount which is to be established during the hearing of the petition and the objections filed is due and payable to the applicant.

This court cannot on its own motion grant the right to administer the estate of the deceased to any particular person before it has heard and determined the objection and cross petition that are on record. It appears to me that the parties herein have not been keen on finalising this matter which was filed in court about 9 years ago. It is in the interest of all concerned that this petition and all the pending applications be disposed of as soon as possible. I therefore direct that this matter be listed for directions as soon as possible after which an early hearing date will be fixed. I decline to grant the orders as sought by the applicant but make no orders as to costs of the application.

DATED, SIGNED AND DELIVERED at Nakuru this 9th day of December, 2005.

**D. MUSINGA**

**JUDGE**

**9/12/2005**

Ruling delivered in open court in the presence of Mr. Mbiyu holding brief for Mr.

Mutonyi for Mr. Mohamed Komen and no other appearances.

**D. MUSINGA**

**JUDGE**

**9/12/2005**



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