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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

MISC CAUSE NO. 86 OF 1994

IN THE MATTER OF WILLS & INHERITENCE ACT

Versus

IN THE MATTER OF PATRICK SOKO DECEASED

CORAM: MKANDAWIRE, J
Mr Maulidi for the applicant
Mr Mbendera for the respondent

RULING

This is a notice of motion brought under section 25 of the Wills and Inheritance Act. The court is being asked to appoint a receiver pending the grant of letters of administration. The notice of motion also talked of an injunction but this was not pursued by the learned counsel for the applicants.

The undisputed facts are that the deceased was married to the applicants' mother in 1955. He had five children with her. The children are all grown up. In 1980, the deceased and the applicants' mother separated. The deceased took on another woman by the name of Ann Kunsinda. It is believed that there was no formal marriage with this woman. On 6th February 1994 the deceased died intestate. He left behind a house on plot No. LK 441 Michiru. The house is on mortgage to the New Building Society.

So far no one has obtained letters of administration to administer the estate. The affidavit in support of the notice of motion does not say why the mother and/or any of the children have not applied for letters of administration. If anyone did apply, the affidavit does not say what stage has been reached. If on the other hand, there are any obstacles, none has been disclosed. All paragraph 13 is saying is that the applicants intend to apply for letters of administration. The normal procedure is to obtain letters of administration. A receiver can be no substitute for an administrator.

However section 25 of the Wills and Inheritance Act provides that a court may appoint a receiver pending the grant of letters of administration. But before a court can appoint a receiver there must be evidence that there is danger that the property may be wasted. Paragraph 9 of the applicants' affidavit says that the woman whom the deceased took on authorised the New

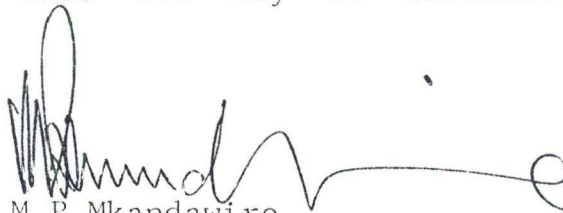
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Building Society to sell the house so as to get the proceeds therefrom for her own benefit and the benefit of her children to the exclusion of the applicants and the other children. The question now is: is there danger that the property LK 441, Michiru may be wasted. Surely if M/S Ann Kunsinda has authorised the New Building Society to sell the house and then pocket the proceeds then there is danger of waste.

Mr Mbendera who represents the respondent submitted that a receiver cannot be appointed because the applicants have not substantiated their allegation that the respondent has given instructions to the New Building Society that the house be sold. There is no affidavit in reply. The applicants' affidavit was served on the respondent's lawyers on 18th November, 1994. There was therefore ample time for the respondent to file an affidavit in reply to refute what is alleged of her if what the applicants are saying is not true. In the absence of any refutation from the respondent, the applicants' statement goes unchallenged. Had the respondent put in an affidavit denying the allegation, then the court would be called upon to decide as to who was telling the truth. Now that the respondent chose to keep quiet, I have no but to go by what the applicants' are saying in their affidavit. It may be argued that there was no obligation on the respondent to file an affidavit in reply. Well, that may be so, but I think that where allegations are made, it is important to refute them if they are not true. The applicants were present at the hearing and Mr Mbendera could have cross-examined them had he wished.

In the circumstances, I am satisfied that there is indeed danger that the property may be wasted. I therefore appoint the General Manager of the New Building Society to be the Receiver pending the granting of letters of administration. But as I have already said earlier on a receiver can be no substitute for an administrator. It is important therefore that letters of administration be obtained without delay.

Made in Chambers this 6th day of December, 1994 at Blantyre.



M P Mkandawire
JUDGE