



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MOMBASA**

**FAMILY DIVISION**

**SUCCESSION CAUSE NO. 103 OF 2012**

**IN THE MATTER OF THE ESTATE OF OMAR ABDALLA TAIB**

**HAFSWA OMAR ABDALLA TAIB**

**NAHIDA OMAR ABDALLA TAIB**

**HUSSEIN OMAR ABDALLA TAIB.....PETITIONERS**

**VERSUS**

**SWALEH ABDALLA TAIB.....RESPONDENT**

**RULING**

1. Omar Abdalla Taib, the deceased herein died on 11.2.12. He was survived by his children Hafswa Omar Abdalla Taib, Nahida Omar Abdalla Taib and Hussein Omar Abdalla Taib, the Applicants. The estate of the deceased comprised of *inter alia* 50% shares in an enterprise known as Mombasa Cargo Tally Organization. The other 50% was owned by the Respondent a brother to the deceased. Upon the demise of the deceased, a dispute arose between the Applicants and their uncle the Respondent on the management of the said business. The Applicants filed an application in this Court seeking injunctive and other orders against the Respondent which culminated in a consent order dated 28.8.13 on some of the issues. Parties were unable to agree on the issue of the goodwill of the business. Upon consideration of the matter, this Court in its judgment of 9.6.14, found that the existence of goodwill had not been proved and further that the value of such goodwill if any, was not ascertainable. For the said reason, the prayer for goodwill was disallowed.

2. The Applicants moved to the Court of Appeal vide Civil Appeal No. 22 of 2014 to challenge the decision of this Court. On 12.3.15 however, the appeal was struck out for want of leave to file the same. Undeterred, the Applicants filed an application in this Court on 24.3.15 seeking the requisite leave to file the appeal in the Court of Appeal. While the application was still pending however, the Respondent died. The Applicants therefore filed an application dated 24.11.16 seeking *inter alia* that Hassan Swaleh Taib the legal representative of the Respondent be made a party to the Appeal. By a ruling dated 1.12.17 however, the Application was dismissed for the reason that no limited grant of representation had at the time been issued to the said Hassan Swaleh Taib.

3. On 19.9.17, the Applicants' advocate told the Court that he had been shown the limited grant by the Respondent's advocate. He had proposed that the parties agree by consent to have the Respondent substituted but the Respondent's advocate was not present in Court. Parties were given time to agree on substitution. When the matter came up again on 3.10.17, no agreement had been reached and the Court directed that parties file submissions which they did and the ruling of 1.12.17 delivered. The Applicants fixed the present Application dated 19.3.15, in which they seek leave to file appeal, for hearing on 17.4.18 and the Court was told that parties had filed submissions.

4. It is noted that to date the Court is yet to see the limited Grant of representation in respect of the estate of the Respondent. Further the holder of the limited grant in respect of the estate of the deceased Respondent has not been made a party in the Application dated 19.3.15. Consequently the prayers sought cannot be granted as there is no Respondent herein.

5. For the foregoing reasons, this Court finds that the Application dated 19.3.15 lacks merit and the same is dismissed. Each party shall bear own costs.

**DATED, SIGNED and DELIVERED in MOMBASA this 30<sup>th</sup> day of May 2019**

**M. THANDE**

**JUDGE**

**In the presence of: -**

..... for the Applicants

.....for the Respondent

.....Court Assistant