



**REPUBLIC OF KENYA**  
**IN THE HIGH OF KENYA AT MILIMANI**  
**SUCC CAUSE NO. 2205 OF 2011**

**IN THE MATTER OF THE ESTATE OF ZUHURA SALIM DOSSA – DECEASED**

**RULING**

1. The deceased died on 7<sup>th</sup> December 2009 at the age of 82 years. Representation to her estate was sought by her daughters on 6<sup>th</sup> October 2011. According to their petition and the letter from the Assistant Chief of California Sub-Location, she was survived by four children – the two petitioners and two other persons. There is also a dead son, called Yusuf Juma. The surviving children are Amina Juma, Alima Khamis, Twalib Musa and Saumu Achola Musa.
2. The petition was published on 20<sup>th</sup> April 2012 through Gazette Notice Number 5151 of 2012. The notice as usual invited the filing of objections to the making of the grant within 30 days of the notice. On 18<sup>th</sup> May 2012, Twalibu Musa Obuya filed a notice of objection dated 17<sup>th</sup> May 2012.
3. A grant of letters of administration intestate was made on 25<sup>th</sup> May 2012 to Alima Khamis and Saumu Achola Musa.
4. On 27<sup>th</sup> September 2012, Twalib Musa Obuya filed a Summons for Annulment of Grant dated 13<sup>th</sup> September 2012, he complained that the grant was made in error or oversight on the part of the court. He also stated that the relevant legal procedure had been overlooked. In his affidavit sworn on 26<sup>th</sup> September 2012 he stated that he had filed notice of objection within time but the court did not invite him to file answer to the petition and petition by way of cross-application as required in the law. He also complained that the petition should have filed at the Kadhi's court as the parties were Muslim.
5. In their reply through the affidavit sworn on 20<sup>th</sup> October 2012, the petitioners asserted that the applicant did object to their application, but argues that the said objector did not follow the right procedure.
6. There is also an affidavit of protest sworn on 17<sup>th</sup> December 2012 by Alima Khamis and Amina Juma Karanja. This affidavit was filed in person instead of being filed through counsel. They state that the applicant was omitted in the list of those who consented to the petition by Alima and Saumu. They accuse Saumu of acting unilaterally in the administration of the estate. They would like Twalib Musa the applicant appointed administrator of the deceased's estate.
7. Directions were given on 31<sup>st</sup> October 2012 that the annulment application be disposed of by way of written submissions. The applicant filed his written submissions on 7<sup>th</sup> November 2012 dated 6<sup>th</sup> November 2012. The respondent's submissions are dated 10<sup>th</sup> November 2012 and were filed in court on the same date.

8. *Section 67* of the Law of Succession Act requires that once an application for grant is made notice thereof must be published inviting objections. The period for filing objections should be not less than thirty (30) days. Under *Section 68*, once notice has been given the court should notify the objector to file an answer to the petition and a cross-application within a specified period of time. These provisions are echoed in Rule 17 for the Probate and Administration Rules.

9. The notice envisaged in *Section 67* of Act was published and the notice of objection referred to therein filed by the objector. However, *Section 68* and Rule 17(5) were not complied with. The registrar of the probate registry did not give notice to the objector to file answer to the petition and a petition by way of cross-application. These two provisions are in mandatory terms. It made the process of obtaining the grant defective.

10. I have noted from the papers lodged with the petition that the deceased was survived by four children – Amina, Alima, Twalib and Saumu. Only two of them sought probate. The law requires that the rest of the children ought to sign consent to approve the application by the petitioners. The consent Form 38 on record was signed by only one of the two children who were not applying for grant. This too was a serious breach of procedure.

11. There is enough material before me sufficient to convince me that the process of obtaining grant in this matter was defective, and therefore the grant made on 25<sup>th</sup> May 2012 susceptible to revocation.

12. In the end I make the following orders:-

(a) That the grant made on 25<sup>th</sup> May 2012 is hereby revoked.

(b) That I appoint Amina Juma Karanja, Alima Khamis, Twalib Musa and Saumu Achola administrators of the estate of the deceased Zuhura Salim Dossa.

(c) That a grant of letters of administration intestate shall issue to them accordingly.

(d) That there shall be no order as to costs.

**DATED, SIGNED and DELIVERED at NAIROBI this 31<sup>st</sup> DAY OF January, 2014.**

**W. MUSYOKA**

**JUDGE**