



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 379 OF 2010

IN THE MATTER OF THE ESTATE OF THE LATE NEDDY MUSONYE – DECEASED

IN THE MATTER OF THE PETITION OF:

DEBORAH MUSONYE 1ST ADMINISTRATOR/APPLICANT

VERSUS

JONAH OMUYOMA 2ND CO-ADMINISTRATOR/RESPONDENT

AND

REHEMA MUHATIA MUSONYE APPLICANT

R U L I N G

The applications dated 14/2/2011, 27/6/2011 and 7/11/2011 were heard together on 27/11/2012.

The application dated 14/2/2011 seeks the following orders:-

1. (Spent).
2. **THAT this Honourable Court be pleased to order for the revocation of MUMIAS SRMC. SUCCESSION CAUSE NUMBER 17 of 2010.**
3. **THAT this Honourable be pleased to compel the 2nd co-administrator/respondent JONAH OMUYOMA to make a full disclosure of the property of the estate now in his possession and control and to further fully account for the same.**
4. **THAT this Honourable Court be pleased to order the respondent to deposit all money belonging to the estate into this court.**
5. **THAT this Honourable Court be pleased to declare the 2nd co-administrator/respondent an intermeddler in the estate of the deceased and to thus discharge him from being a co-administrator thereof.**

The application is supported by the affidavit of **Debora Musonye** sworn on 14/2/2011.

The gist of the said affidavit is that the respondent filed **Succession Cause No. 17 of 2010** at the SRM's Court, **Mumias** while he was aware of the existence of **H.C. Succession 379 of 2010** at **Kakamega**. The applicant accuses the respondent of having caused the payment of some of the money that formed part of the estate of the deceased to himself without due court process. The applicant fears that the respondent

may have squandered part of the money.

The respondent swore a replying affidavit on 3/3/2011. The said affidavit criticizes the grant of letters of administration intestate in SRM's **Mumias** Succession 17/2010 exhibited by the applicant as unclear and uncertified. It was further averred that the records of the lower court have not been availed and that the applicant has come to court with unclean hands, having failed to comply with the court orders for production of motor vehicle registration **No. KBC 146 R**.

The applicant swore a supplementary affidavit on 31/3/2011 which basically states that she has made arrangements to have the motor vehicle driven to the police station for safe keeping.

The application dated 27/6/2011 seeks orders that:-

1. **(Spent).**
2. **THAT this Honourable court be pleased to substitute Deborah Musonye the 1st administrator/applicant herein who is now deceased with Rehema Muhatia Musonye.**
3. **THAT thereafter the application dated 14th February 2011 and certified as urgent be listed for hearing on a priority basis.**
4. **THAT costs be in the cause.**

The applicant who is the daughter of the 1st administrator has deponed that the 1st administrator has since passed away. No papers have been filed in opposition to the application. The applicant **Jonah Omuyoma** in the application dated 7/11/2011 describes himself as the guardian of the two children who are the survivors of the deceased. The applicant's contention is that he has been shouldering the payment of school fees, medical and maintenance expenses for the two children alone and needs to access the accounts stated herein for payment of school fees and the upkeep for the minors. No affidavit was filed in reply to the said application.

On 21/6/2012, parties opted to proceed with the applications by way of written submissions.

Mr Mango advocate for the 1st administrator filed his written submissions. No written submissions by the counsels for the 2nd and 3rd administrators and they did not also attend court on 27/11/2012, although they were duly served as per the affidavit of service sworn on 26/11/2012.

Although the application dated 7/11/11 is unopposed, the orders sought therein for the release of the money must be considered together with the application dated 14/2/2011 which seeks orders for a full disclosure and account of the estate of the deceased.

In response to the application dated 14/2/2011, there are no reasons given why the Respondent should not make a full disclosure of the property of the estate of the deceased and account for the same. Application dated 14/2/2011 is allowed in terms of prayer No. 3. Prayer No. 4 of the said application on the issue of the deposit of all the money belonging to the estate of the deceased is pegged to prayer No. 3. In my view, the disclosure and account of the estate of the deceased must come first. I also make orders for **Mumias Succession Cause No. 17 of 2010** to be availed first before the court can deal with prayer No. 2 and 5.

The application dated 27/6/2011 for the substitution of the administrator is unopposed. The same is allowed as prayed. Application dated 7/1/2011 remains pending.

Prayer No. 2, 4 and 5 of the application dated 14/2/2011 remains pending while prayer No. 3 is allowed. Costs in cause.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Kakamega this 18th day of April 2013.

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SAID J. CHITEMBWE

JUDGE