



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

Succession Cause 461 of 2009

**(IN THE MATTERS OF THE ESTATE OF THE LATE SHELDON OYARO MUKHAYE
(DECEASED))**

**JULIUS OMBISI
ANDREW**

OKWARO

**WALTER OYALO.....PETITIONERS/
RESPONDENTS**

VERSUS

JAMES

MUKHAYE OYALO

JOEL

MUKHAYE

**H. OYALO.....INTENDED
OBJECTORS/APPLICANTS**

RULING

In my ruling delivered on 7th May, 2010, I emphasized the need to expedite the process of obtaining a grant of representation to obviate any wastage of the estate and to mitigate further acrimony in view of the fact that it is over 25 years since the deceased died. It appears parties took those sentiments seriously and are now keen to have some of them appointed administrators in order to finalize the process of administration by consolidating the estate, settling debts and distributing to the dependants the net estate. But on the question of who is to be appointed the administrators, there is no agreement. That is the question before me.

The deceased was survived by the following:

1st house

James Mukhaye Oyalo

2nd house

- i) Joel Mukhaye Oyalo
- ii) Julius Ombisi

3rd house

- i) Leah Manga
- ii) Naomi Oyalo
- iii) Andrew Okwako

4th house

- i) Edinah Ambasa
- ii) Harron Oyalo
- iii) Walter Oyalo
- iv) Sheldon Oyalo

One side has proposed James Mukhaye Oyalo (representing 1st house) and Andrew Okwako (representing the 3rd house). The other side has objected to the appointment of James Mukhaye on the ground that over the years he has wasted and appropriated to himself the estate and therefore cannot be relied on to diligently administer the estate. They have also objected to the appointment of Joel Mukhaye Oyalo for the 2nd house and Harron Oyalo of the 4th house, even though their names have not been proposed. The two are accused of conspiring with James Mukhaye Oyalo in wasting the estate.

For their part, this side, (the petitioners) have proposed that they be permitted to proceed as petitioners and to be appointed administrators. In terms of **Part V** of the **Law of Succession Act** all the petitioners and the objectors together with those allied to them can claim a superior priority in the estate, all being children of the deceased. Julius Ombisi (2nd house), Andrew Okwako (3rd house) and Walter Oyalo (4th house) had petitioned for a grant.

James Mukhaye Oyalo (the only child in 1st house), Joel Mukhaye Oyalo (first born in the 2nd house) and Harron Oyalo (the 1st born son in the 4th house) objected. If only to satisfy each of the dependants and if only the law allowed, all the dependants would have been appointed to administer the estate. But **Section 56** of the **Law of Succession Act** is explicit, that no grant can be made to more than four persons in respect of the same property.

Therefore, where there are multiple competing interests like in this dispute, **Section 66** of the **Law of Succession Act** donates a final discretion as to who to appoint the administrator of the estate, bearing in mind the best interest of all concerned. There is no criteria, like first born, last born, girl, boy or only child, as it is a discretion being exercised. Those who have already applied and got gazetted represent the 2nd, 3rd and 4th house. The 1st house where there is only one child, James Mukhaye Oyalo is omitted for what the petitioners claim misappropriation of the estate.

The misappropriation has not been proved but only suspected. Excluding James Mukhaye Oyalo will only aggravate the acrimony. Including him will help in identifying the estate, collecting and consolidating the estate, some of which it is only him who knows, having been involved for over 25 years. The fact that he

is an administrator will not stop any interested person to seek from him to render account.

In the interest of justice, it is ordered that a grant will be issued to:

- i) James Mukhaye Oyalo
- ii) Julius Ombisi
- iii) Andrew Okwako, and
- iv) Walter Oyalo

Those are my orders.

Dated, Signed and Delivered at Nakuru this 18th day of June, 2012.

W. OUKO
JUDGE