



REPUBLIC OF KENYA

High Court at Kakamega

Succession Cause 272 of 1995

**IN THE MATTER OF THE ESTATE OF THKE LATE SALIM WITABA ACHITSA –
DECEASED**

AND

1. LUCIA KHASIALA MADEGWA

2. MARY BUSOLO MATEKWA..... PETITIONERS

VERSUS

MOHAMMED MUSONYE SALIM OBJECTOR

RULING

The application by way of Notice Motion dated 12.10.06 seeks the following orders:

“1. That the Grant of Letters of Administration issued herein in favour of the Petitioners/respondents be annulled on the grounds that:-

a) The same was obtained by fraud and or deceit.

b) The same was obtained through concealment of material facts to the court.

2. That the letters of Administration in respect of the deceased be issued in favour of the Applicant instead.

3. That all the transactions undertaken in respect of the deceased’s estate following the issue of the Grant of Letters of Administration to the respondents be cancelled.

4. That any other further orders be made as the Honourable court may deem just.

5. That the costs of this application be provided for.”

The application is supported by the affidavit of **MOHAMMED MUSONYE SALIM** sworn on 12.10.06. The court was urged to consider the affidavit sworn by the applicant on 16.11.99.

The principal grounds upon which the application is premised are that the applicant is the son to the deceased, SALIM WITAMBA ACHITSA. That the respondents LUCIA KHALISIA MADEGWA and MARY BUSOLO MATEKWA are the widows of his late brother, MATEGWA SALIM. That the respondents filed the Petition herein without involving him or his mother, FATUMA IMBITI SALIM. The mother has since passed away.

The applicant had also filed an application dated 16.11.1999 for him to be enjoined in these Succession Proceedings but seems to have abandoned the application as it remains unprosecuted to-date.

The respondents had filed grounds of opposition dated 7.6.00 and an affidavit in reply sworn on 17.6.00 in opposition to the application dated 16.11.1999. The respondents sought to rely on the said grounds of opposition and affidavit dated 7.6.00 and 17.6.00 respectively in their response to the current application dated 12.10.06.

A replying affidavit sworn on 23.4.07 was also filed by the respondents in opposition to the application dated 12.10.06. In the said affidavit, the respondents contended that the filing of the application dated 12.10.99 before the application dated 16.11.99 was disposed of was an abuse of the process of the court. That the applicant received his share of his father's estate and the remainder of the estate was meant for their late husband who was a brother to the applicant.

The application dated 16.11.1999 appears to have been overtaken by events and/or abandoned. It has never been prosecuted.

There is no consent on record by the other beneficiaries for the respondents to Petition for the grant of letters of Administration. The applicant's name is missing from the list of survivors reflected in form P & A 5. There was therefore concealment of material facts. The issue of who amongst the beneficiaries will get what share of the estate of the deceased will be determined at an appropriate stage following an application for the confirmation of the grant. The applicant is a beneficiary of the estate of the deceased and therefore has the *locus standi* to file the Objection Proceedings.

Consequently, prayer No. 1 and 3 of the application dated 12.10.06 is allowed. A fresh grant to issue in the joint names of the applicant and the respondents. Costs to the applicant.

Delivered, dated and signed in open court this 11th day of October, 2012

**B. THURANINA JADEN
J U D G E**