



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Succession Cause 87 of 2003**

**IN THE MATTER OF THE ESTATE OF PAUL SHITOGO SHIKUTWA alias SHITOGO SHIKUTWA - (DECEASED)**

**BETWEEN**

**TOM KANYANGA SHIKUTWA .....APPLICANT**

**A N D**

**LONA SHILWAZO KALIA ..... RESPONDENT**

**R U L I N G**

The application by way of Chamber Summons dated 24.7.12 seeks the following orders:-

- That the Grant of Letters of Administration issued to LONA SHILWAZO KALIA on 21<sup>st</sup> September 2004 herein and confirmed on 12<sup>th</sup> July, 2011 be revoked.
- That the said LONA KALIA do show to this Honourable court the full inventory of the deceased estate.
- That pending the hearing and determination of this application inter partes an order of prohibition do issue in respect of Title Number Kakamega/Cheptulu/211 prohibiting any transaction until further orders of this court.

The application is supported by the affidavit of the applicant, TOM KANYANGA SHIKUTWA sworn on 24/7/12. The applicant's case is that the deceased, PAUL SHITOGO SHIKUTWA alias SHITOGO SHIKUTWA who was his grandfather passed away on 10.8.1986. The estate of the deceased comprised of L.P.NO. Kakamega/Sheptulu/211 which was subdivided amongst the four sons of the deceased.

The applicant's contention is that the distribution of the estate as reflected in the certificate of Confirmation herein dated 26.6.12 has disinherited some of the dependants and/or beneficiaries to the estate including the applicant herein and one BENARD ISIAHO ISIJI as their consent was not sought before the court was petitioned for the grant of letters of Administration. According to the applicant, the grant was obtained fraudulently by making of false statements or concealment of material facts.

In opposition to the application, the respondent, LONA SHILWAZO KALIA filed an affidavit sworn on 15.9.12. The respondent, LONA SHILWAZO KALIA who substituted her late brother LUKA INDUNYA SHITOGO, the initial petitioner on 21.9.04. In the said affidavit, the respondent averred that

the applicant is a son to the late brother, DAUDI SHITOGO SHIKUTWA.

The respondent has conceded that the applicant was not included during the commencement of this Succession, stating that the applicant was not an immediate child of their late father, PAUL SHITOGO SHIKUTWA alias SHITOGO SHIKUTWA and therefore there was no need to include the applicant in the Succession Cause. It is further stated that the father of the applicant had benefited during the lifetime of the late PAUL SHITOGO SHIKUTWA alias SHITOGO SHIKUTWA.

The respondent has conceded to the non-disclosure of some of the persons beneficially entitled to the estate of the deceased. The applicant, TOM KANYANGA THIKUTWA was one of the beneficiaries/dependants not disclosed in the Summons for Confirmation of Grant. If the father to the applicant had since passed on, the children ought to have been disclosed.

Even the respondent who has stated that she was a daughter to the deceased (PAUL SHITOGO SHIKUTWA) was not disclosed. The petitioner ought to have disclosed all the material facts and leave it to the court to decide. The petitioner seems to have presented to the court a “stage managed” petition which sailed through without any objections.

With the foregoing, the application has merits and the same is allowed with costs to the applicant.

*Delivered, dated and signed at Kakamega this 22<sup>nd</sup> day of November, 2012*

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