



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 123 OF 2006**

**IN THE MATTER OF THE ESTATE OF THE LATE *REUBEN LIDONDE* – DECEASED**

**BETWEEN**

**HANNAH SHILAVUKHA .....PETITIONER/  
RESPONDENT**

**VERSUS**

**1. MOSES LITONDE )  
2. AGRIPINAH LICHUNGU LITONDE) .....OBJECTORS/  
APPLICANTS**

**RULING**

- 1. Reuben Lidonde** died on 25.10.2004 and on 17.3.2006, his widow, Hannah Shilavukha petitioned for a grant of Letters of administration intestate to his estate. The grant was issued on 27.9.2006 by **G. B. M. Kariuki, J.** and before the same could be confirmed, on 11.11.2009, Agripina Lichungu Litonde and Moses Lidonde sought orders under Rule 73 of the Probate and Administration Rules for orders that they should be included as survivors of the deceased and their inheritance determined.
- 2.** In a short and precise Supporting Affidavit sworn on 9.11.2009, Agripina Lichungu aforesaid stated that the deceased was their father and that they were left out of the list of survivors when the Petition was filed. That they stand to suffer great loss if they do not inherit any part of the deceased's estate.
- 3.** In response, the Petitioner filed a Replying Affidavit on 11.3.2010 and stated that the Applicants are not biological children of the deceased and that their mother, Christine Naliaka Barasa, married the deceased after the Applicants were born. That the deceased later bought a parcel of land for the said

Christine Naliaka and Moses Litonde aforesaid and I note that title No. S/Kabras/Chesero/2170 is in their joint names (annexture "AS1"). Further, that the deceased had divided his property before he died and the Applicants occupy the portion allocated to their mother.

4. The matter before me is simple. The Petitioner does not deny that the Applicant's mother was married to the deceased. She also stated in the Petition that the following persons survived the deceased;

(i) *Mrs. Hannah Shilavukha – Widow*

(ii) *David Masinza lidonde*

(iii) *Silvanus Khayati*

(iv) *Agnes Shilwatsi*

(v) *Victor S.*

(vi) *Gladys B.*

(vii) *Getrude I.*

(viii) *Vincent A.*

(ix) *Esther LA*

(x) *Christine Nalyaka*

(xi) *Joseph Lilumo Lidonde*

(xii) *Mr. Luka Mutsamu Anami*

(xiii) *Samson Libuki (emphasis added)*

5. One of the survivors is Christine Naliaka, the Applicant's mother, and it seems to me that the Applicants have not been recorded as being survivors for reasons that they are not biological children of the deceased. That issue is of course contested and at this stage all I can do is to order as follows;

6. Let the Petitioner file a Summons for Confirmation of Grant within 45 days and serve it on Christine Naliaka as well as the Applicants. Once that is done, this court will determine whether the Applicants are

entitled to inherit part of the deceased's estate directly or through their mother.

7. The application dated 9.11.2009 is determined in those terms.

8. Orders accordingly.

*Delivered, Dated and Signed at Kakamega this 22<sup>nd</sup> day of February, 2011.*

**ISAAC LENAOLA**

**J U D G E**