



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KAKAMEGA

SUCCESSION NO.106 OF 2008

**IN THE MATTER OF THE ESTATE OF DORICA OLUMIRE alias DORIKA OLUMIRE
MAPESA DECEASED**

A N D

**FELISTA KWEYU SHIEYO 1ST APPLICANT
GEORGE G. BARASA 2ND APPLICANT**

V E R S U S

SILAS OKUMU SIMEYO RESPONDENT

J U D G M E N T

1. Before me is a Summons for Revocation of grant dated 26.3.2008 in respect of the estate of Dorika Lumire Mapesa (deceased) who died on 6.2.1994. I note that in Mumias SRM's Court Succession Cause no.53 of 2006, Silas Okumu Simeyo sought a grant of letters of administration by his Petition dated 15.8.2006 and in that Petition he indicated that he was the only survivor of the deceased and that the only asset available for distribution was land parcel no. **E/Wanga/Lubinu/66**.

2. In a letter to the court dated 6.8.2006, Wilfred Salaya, Chief, Lusheya Location stated that Simeyo aforesaid was a "son" of the deceased. In the Petition aforesaid, he stated that he was doing so in his capacity as a "beneficiary" and on 21.5.2007, a grant of letters of administration was issued to him and the same was confirmed on 25.1.2008, although I note that from a certificate of official search, the deceased's parcel of land was in fact transmitted to him on 29.5.2007, long before the grant was confirmed.

3. In any event, the Summons for Revocation of grant was instituted by Felista Kweyu Shieyo and George Barasa and the grounds on which it was filed are that;

"(i) The grant was obtained fraudulently by the making of false statements and by the concealment from the court of material particulars

(ii) The proceedings to obtain the grant were improper, irregular and defective in substance.

(iii) The 1st applicant is the only surviving child of the late DORICA OLUMIRE MAPESA a.k.a. DORIKA OLUMIRE MAPESA and she has been omitted from the proceedings though she occupies and/or utilizes part of the deceased's land L.R. NO. E. WANGA/LUBINU/66 which portion she and her co-applicant and other heirs are solely entitled to inherit from the deceased, to the exclusion of the

respondent.

(iv) The respondent filed the petition secretly and without the knowledge and consent of the applicants yet the 1st applicant ranks first in priority in the matter of seeking letters of administration to the deceased's estate.

(v) The 1st applicant did not denounce her right to take out letters of administration to the deceased's estate or give the respondent consent to proceed.

(vi) The principal aim of the respondent is to gain access and dispose of the said parcel of land and thereby deny the deceased's heirs their rightful inheritance and enrich himself unjustifiably.

(vii) The applicants are the lawful administrators of the estate of the deceased pursuant to a grant of letters of administration intestate issued to them by this Honourable court on 20th December 2007."

4. Of interest is that in H.C. Succ. Cause no.416/2007, a grant of letters of administration was made to the Applicants and the same is dated 20.12.2007 and therefore the Applicants also claim a right to administer the estate.

5. I further note that Ochieng J. on 27.11.2008 ordered that the summons for revocation be heard by way of oral evidence and so Chitembwe J. took part of the evidence and i concluded the hearing. The persons who testified were Felister Kweyu, George Barasa and Silas Okumu Simeyo. The latter admitted that Dorica, the deceased was the mother of Felista and grandmother of George (the Applicants). That his father, Simeyo inherited Dorika after her husband, one Mapesa, died and that Mapesa was infact his uncle. That he never told Felista about the succession cause and never mentioned her in the Petition as Dorica's daughter.

6. In the circumstances, there is little more to say becuase **section 76** of the the Law of Succession Act provides as follows;

"s.76. A grant of representation, whether or not confirmed, may at any time be revoked or annuled if the court decides, either on application by any interested party or of its own motion.

(a) that the proceedings to obtain the grant were defective in substance

(b) that the grant was obtained fraudulently by the making of a false statement or by concealment from the court of something material to the case.

(c) that the grant was obtained by means of and untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadrvetently.

(d) That the person to whom the grant was made has failed, after due notice and without reasonable cause either-

(i) to apply for confirmation of the grant within one year from the date thereof, or such longer period as the court has ordered or allowed or

(ii) to proceed diligently with the administration of the estate, or

(iii) to produce to the court, within the time prescribed, any such inventory or account of administration as is required by the provisions of paragraphs (e) and (g) of section 83 or has produced any such inventory or account which is false in any material particular; or

(e) that the grant has become useless and inoperative through subsequent circumstances."

7. In this case, there was an irregularity when the deceased's biological child, Felista, is not involved in

the succession proceedings and more so where she had obtained a grant of letters of administration in proceedings before this court. Further, it was irregular for Silas Okumu Simeyo to style himself a “son” and/or “beneficiary” of the deceased’s estate by locking out others who were closer in consanguinity to the deceased.

8. In the event, I will revoke the grant issued in Mumias SRM’s Court Succession Cause no. 53/2006 and will also order that the said cause be consolidated with Kakamega H.C. Succ. Cause no.416/2007 and before distribution can be made, the matters to be mentioned for direction on how to proceed and which court will conclude the same.

9. The Respondent will bear the costs of the revocation.

10. Orders accordingly.

Delivered, dated and signed at Kakamega this 10th day of February 2011

ISAAC LENAOLA
J U D G E