



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

PROBATE AND ADMINISTRATION NO. 145 OF 1996

IN THE MATTER OF THE ESTATE OF CHEBOI MANA

RULING

David Maina and **Esther Maina** seek leave of the court to substitute **Teriki Maina** one of the administrators of the Estate of **Cheboi Maina** (deceased). They make the application under Sections 56, 58, 66, 75A and 81 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules. The grounds of the application are that the said **Teriki Maina** died on 1st January, 2010 before concluding the administration of the estate of **Cheboi Maina** and as Children of the said **Teriki Maina** they are entitled to take over the said administration.

The application is supported by an affidavit sworn by the applicants which affidavit is a mere elaboration of the grounds of the application.

The application is opposed by the surviving administrator by way of a replying affidavit sworn by him. He has deponed, *inter alia*, that at the time of the death of **Cheboi Maina**, he had already distributed his estate and the applicants had their shares of the estate registered in their names. In the premises, according to the surviving administrator, the applicants have no interest in the estate of the deceased **Cheboi Maina**.

When the application came up before me for hearing on 23rd May, 2011, the surviving administrator and his counsel did not attend. The application therefore proceeded ex-parte.

I have considered the application and the affidavits filed. I have also given due consideration to the record. Having done so, I take the following view of the matter. The surviving administrator did not exhibit the particulars of the property which he alleges had been distributed to the deceased administrator before the demise of the deceased **Cheboi Maina**. In any event neither his counsel nor himself attended at the hearing of the application to urge his side of the case.

Given the averments of the applicants and there being no evidence of distribution of the deceased's estate, I have no difficulty in concluding that the order sought is deserved to enable the applicants with the surviving administrator continue with the further administration of the estate.

Accordingly, the application dated 10th November, 2010 is allowed as prayed in paragraphs 2 and 3 thereof.

The costs to be in the cause.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 5TH DAY OF AUGUST, 2011

F. AZANGALALA

JUDGE

Read in the presence of:-

**Mr. Barasa H/B for Mr. Omboto for the Applicant and
Mr. Wabuyube H/B for Mr. Buluma for the Respondent**

F. AZANGALALA

JUDGE

5TH AUGUST, 2011