



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Succession Cause 17 of 2010**

**IN THE MATTER OF THE ESTATE OF THE LATE MIRIAM NAKAIZA ABDALLA, DECEASED**

**ROSE KAIZA )**  
**BADRU ABDULRAHMAN MOHAMED ) ..... PETITIONERS**

-AND-

**ANGELO KAIZA MPANJU .....INTERESTED PARTY**

**RULING**

The petitioners made an application before this Court and, on the strength of the averments they made, obtained orders for the issuance of letters of administration intestate in respect of the estate of *Mariam Nakaiza Abdalla*, deceased, on **20<sup>th</sup> April, 2010**. It turned out that the element in the said estate which most concerned the applicants was **Plot No. Mombasa/Block XXI/166**; and they returned before the Court by Chamber Summons dated **28<sup>th</sup> April, 2010** with, *inter alia*, the following two prayers:

***“2. THAT all future rent collections, rent accruals, mesne profits from Plot No. Mombasa/Block XXI/166 be collected by and/or deposited with Njihia Muoka Rashid Co. Ltd for such a period as, or until the grant issued on 20<sup>th</sup> April, 2010 is confirmed and distribution of the estate is done.*”**

***“3. THAT Angelo Mpanju Kaiza [do] account for all rents and accruals and/or mesne profits collected from Plot No. Mombasa/Block XXI/166.”***

It is clear that the applicants upon obtaining orders granting their prayers, made haste to take over the said property, Mombasa/Block XXI/166 – and it is precisely this act, that opened up the possibility that this Court had not been informed of the fact that the title to that property had been vested by law, as restated twice by the High Court and once by the Court of Appeal, in **Angelo Kaiza Mpanju**, in final orders that were well known to **Rose Kaiza**, one of the petitioners herein. **Rose Kaiza** was a party in all those superior Court decisions; she was the originator of the actions; she gave testimonies before the superior Courts, and supplied exhibits which she knew to be valid and which remain valid to-date; the relevant disputes were fully canvassed; the binding decisions of the superior Courts were consistently in favour of **Angelo Kaiza Mpanju**, and against **Rose Kaiza**. But **Rose Kaiza** now placed completely *different exhibits* before this Court, in aid of her prayers for letters of administration and for take-over of the suit property. In the instant application for revocation or annulment of the said letters of administration in favour of **Rose Kaiza**, counsel for **Angelo**

**Kaiza Mpanju** has urged that the contradictory testimony and exhibits now brought before the Court by **Rose Kaiza**, constitute perjury and possibly, other administration-of-justice-related offences, in respect of which this Court should give appropriate directions.

In **Angelo Kaiza Mpanju's** summons for revocation or annulment of grant, dated **3<sup>rd</sup> May, 2010** the substantive prayers were as follows:

- (a) the grant of letters of administration intestate to **Rose Kaiza** and **Badru Abdulrahman Mohamed** issued on **20<sup>th</sup> April, 2010** be discharged and thereafter, revoked and annulled forthwith;
- (b) direction be given that the Director of Criminal Investigations in the Police, do investigate the appearance of criminal acts on the part of **Rose Kaiza** and **Badru Abdulrahman Mohamed**, especially in the form of outright perjury in the face of the Court.

The application rests on the following general grounds:

- (i) the grant of letters of administration was obtained fraudulently by making false representations, or by concealment of material information from the Court;
- (ii) the grant of letters of administration was secured by untrue allegations of fact;
- (iii) the petitioners deliberately misled the Court to issue grant of letters of administration intestate;
- (iv) the petitioners then used a grant so fraudulently obtained, to trespass upon the suit premises, and to harass and interfere with the enjoyment of quiet possession by interested parties.

Specific substantiation of the foregoing grounds was carried in the supporting affidavit sworn by **Angelo Mpanju Kaiza**, the son of the deceased who used to be the owner of the suit property.

The deponent had been unaware of the application by the petitioners for letters of administration, to which he would in any event have raised objections.

The main objection the deponent would have raised, is that the deceased, **Mariam Nakaiza Abdalla**, had not died intestate; she had left a **Will** dated **3<sup>rd</sup> October, 2002** (the deponent annexed the said Will). The deceased had no dependants when she died – contrary to the contention by the petitioners.

The deponent averred that **Rose Kaiza** did know that the deceased did not die intestate, but had left a Will; and Rose Kaiza did lodge a High Court suit seeking that the said Will be “declared null and void or be revoked and/or annulled on the ground [that the] document [was] a forgery, false and fraudulent” [**Rose Kaiza's** Originating Summons and supporting affidavit in HCCC No. 1037 of 2004 (O.S.) dated **28<sup>th</sup> September, 2004** attached]. It is deponed that the said Originating Summons suit, to the knowledge of **Rose Kaiza**, was dismissed by the High Court in its ruling dated **29<sup>th</sup> September, 2006 (Mr. Justice Maraga)**. It is deponed that the High Court's orders were reflected in a **decree**, drawn and issued on **9<sup>th</sup> March, 2007**.

The deponent gives still more evidence that **Rose Kaiza** was aware of the Court's decision on the validity of the said Will: she applied (her application dated **28<sup>th</sup> November, 2007**) for a **review** of the High Court's decision; but the review conducted resulted in the ruling (**Maraga, J**) of **16<sup>th</sup> January, 2008** which turned against **Rose Kaiza**.

The deponent gave further evidence that **Rose Kaiza** was aware of the two decisions of the High Court: she lodged an appeal to the Court of Appeal, in **Civil Appeal No. 225 of 2008**; but her appeal was dismissed in a Judgment delivered on **16<sup>th</sup> October, 2009**.

It is deponed that **Mariam Nakaiza Abdalla's** Will dated 3<sup>rd</sup> October, 2002 made a bequest to **Angelo Mpanju Kaiza** in the following terms:

**“3. I BEQUEATH to ANGELO MPANJU KAIZA of Id. No. 3154010/66 all my money together with**

*accrued interest held at Barclays Bank of Kenya Ltd Mombasa Nkrumah Road Branch under Certificate of Deposit No. 500764 or under any other certificate number, or reference number that the said deposit account may be referred to or held under.*

4. **THAT I also bequeath and give to the said ANGELO MPANJU KAIZA all my personal belongings to do with them as he shall wish.”**

And **Rose Kaiza** who knew of the Courts’ holding on the validity of the said Will, “did not disclose to the Honourable Court the material facts [regarding] the estate of the late **Mariam Nakaiza Abdalla**”, and so she merited **not** the granting of letters of administration intestate; she was also not truthful when she stated before this Court that the late **Mariam Nakaiza Abdalla** died intestate.

**Angelo Kaiza Mpanju** deponed that consequent on the granting of letters of administration intestate to **Rose Kaiza**, the purported administrators have entered his property, namely Plot No. Mombasa/Block XXI/166, and given notice to his tenants alleging that they are the new landlords, and they have purported to appoint a new security firm to take charge of the security of the suit property.

The deponent exhibits copies of the **transfer** of the suit property into his name, as well as the document of title showing that **he** is the legal owner of the property.

The deponent averred that the suit property did not form part of the estate of **Mariam Nakaiza Abdalla**, but had been transferred to him for valuable consideration.

**Rose Kaiza**, who swears an affidavit for herself and her co-petitioner (undated, but filed on 11<sup>th</sup> May, 2010), denies that she obtained grant of letters of administration by false representation and concealment of facts before this Court. She avers that at the time she filed her petition, “it was fresh within my knowledge that the matter had been dealt with conclusively by the Court of Appeal”.

The deponent makes the strange averment that she believed she could go behind the Court of Appeal decision, relying on the **police**. In her words:

**“THAT immediately, or soon after the decision of the Court of Appeal, I learned that the Police were still continuing with their investigations and that new and fresh information about the whole saga had been unearthed”.**

The deponent has presumed to overlook the final decisions of the High Court and Court of Appeal, purporting to be the agent of new, better inquiry run between herself and the police, over matters already judicially concluded; in her words (para. 8 of the replying affidavit):

**“THAT through Police File No. 1/09 the Serious Crime Department of the Police [has] embarked on investigations on the transfer of Plot No. Mombasa/Block XXI/166 subsequent to which Angelo Mpanju Kaiza was arrested for questioning on 10<sup>th</sup> May, 2010 over the transaction”.**

The deponent claims to be empowered to ignore the final decisions of the superior Courts by the fact that “fresh evidence has been unearthed” by police officers, who apparently were gratuitously lending their ears to her.

The petitioner questions the said final decisions of the High Court and Court of Appeal; she depones (para. 10 of the replying affidavit):

**“THAT nothing in law can bar me from taking on letters of administration for late mum as I am a beneficiary and daughter of the late Mariam Kaiza.”**

The deponent repeatedly denies the decisions of the superior Courts: she states (para. 11 of the replying affidavit): **“I specifically filed the petition because my mother died intestate”**.

The deponent expresses clear contempt for the final decisions already taken by the High Court and the Court of Appeal, stating as follows (para. 13 of replying affidavit):

**“THAT these proceedings do not whatsoever prejudice the [interested] party as we only seek to preserve the property herein and I earnestly believe that for this Court to comprehend the dispute, parties should be allowed to have their day in Court ....”**

The petitioner casts the final decisions of the superior Courts to the winds, but suggests she still has rights at some judicial forum, which she is now legitimately enforcing (para. 14 of the replying affidavit):

**“THAT ... it is only fair and just that the Honourable Court does look into the issue ... and realize that this is a dispute between real siblings and where justice [needs] to be done irrespective of [the] set procedure and technicalities”**.

The petitioner wishes away the final decisions of the superior Courts, and thus depones (para. 18 of the replying affidavit):

**“THAT ... this court cannot close its eyes and shut me out of justice because of facts which the interested party has decided to hide from the Court and is only using tactics and technicalities to defeat justice and to condemn me ...[to] poverty.”**

In her affidavit, **Rose Kaiza** asks the Court to dismiss the application for annulment of grant of letters of administration, and “to uphold justice and fairness”; she prays that this Court should reaffirm the grant issued to her and one **Badru Abdulrahman Mohamed**, “for the purpose of preserving our late mother’s property notwithstanding the alleged title in the name of **Angelo Mpanju Kaiza**”. **Rose Kaiza** repeatedly overlooks the final decision of the superior Courts, restates that the suit property is part of her mother’s estate, and repeats that the title to the said property is “allegedly” in the name of the interested party.

Learned counsel **Mr. Mogaka** submitted that the petitioners had been entirely dishonest, and had placed false information before the Court and thereby, obtained an unwarranted grant of letters of administration.

Counsel urged that while the petitioner represented to the Court that Plot L.R. No. Mombasa/Block XXI/166 was part of her late mother’s estate, and that the deceased had died intestate, the principal petitioner, **Rose Kaiza**, had prosecuted several proceedings up to the Court of Appeal, on this same question, and the superior courts had consistently rejected her claim.

**Rose N. Kaiza** knew well that the property, Title No. Mombasa/Block XXI/166 was registered in the name of **Angelo Mpanju Kaiza**, and that he was the legal owner of that property; she decided to challenge that legal position, by filing suit, H.C.C.C.NO. 1037 of 2004(OS) in Nairobi. By that suit, **Rose N. Kaiza** sought several declaratory orders, though her main prayer was for the **rectification of the register of titles**, under S. 143(1) and (2) of the Registered Land Act (Cap 300, Laws of Kenya). On an interlocutory application by the respondent (**Angelo Mpanju Kaiza**) in that case, **Lady Justice Koome** thus held and directed:

**“I wish to refer to the provisions of S. 12 of the Civil Procedure Act which clearly provides that a suit is to be instituted where the subject matter is situated ...**

**“In this case I have considered the grounds relied upon by the applicant, and I am satisfied that it will be convenient and economical for this matter to be tried in Mombasa where the suit premises is**

situate ....

**“In the circumstances I hereby allow the application and order that this matter be transferred to the Mombasa Court District Registry for trial and final determination by the High Court of Kenya, Mombasa”.**

The said suit, which was registered at the Mombasa High Court as *H.C.C.C.NO. 155 of 2005*, was fully heard by *Mr. Justice Maraga* who held (29<sup>th</sup> September, 2006):

**“The defendant having acquired the property for valuable consideration, he is the absolute proprietor, to the exclusion of everybody else. He is therefore not under any obligation to account to the plaintiff [for] the income from it ...**

**“In the upshot I find and hold that the plaintiff has failed to prove her claims against the defendant.”**

A decree to that effect was issued under seal on *9<sup>th</sup> March, 2007*.

*Rose N. Kaiza* later returned before *Mr. Justice Maraga*, with an application for a review of the earlier Judgment: she was attributing falsification to certain critical legal documents relating to Plot No. Mombasa/ Block XXI/166. After remarking certain strange elements in the application for review, the learned Judge took the decision to take *viva voce* evidence from the Land Registrar and the document examiner; and he came to the conclusion that the application could not succeed, and dismissed it with costs.

*Rose N. Kaiza* was dissatisfied, and proceeded to file appeal in the Court of Appeal (Civil Appeal No. 225 of 2008), and the Court of Appeal thus stated its final determination:

**“The upshot is that this appeal is lacking in merits and we order that it be and is hereby dismissed with costs”.**

Learned counsel *Mr. Mogaka* submitted that *Rose N. Kaiza* when seeking grant to her of letters of administration, had failed to disclose that the property she was seeking had been held with finality to have been transferred for consideration, from the deceased (during her life time) to the respondent, and she dishonestly claimed that the property was part of an intestate estate of the deceased: the deceased had left a Will; and L.R. No. Mombasa/Block XXI/166 was not part of the testate estate. Counsel urged that the petitioner, by coming before this Court and representing that the deceased had died intestate, when she knew the position to be otherwise, was committing perjury, and was engaging Court process in a fraudulent manner; that *Rose N. Kaiza* was showing disrespect for the final judgments of the High Court and the Court of Appeal.

Learned counsel pointed out specific instances in which the petitioner was engaged in deliberate misrepresentation before the Court:

- (i) When she gave her evidence before the High Court on **3<sup>rd</sup> November, 2005** (in Mombasa HCCC NO. 155 of 2005) she said, of the registration status of L.R. No. Mombasa/Block XXI/166:

**“When I searched I found out that the suit property had been transferred to the defendant.”**

But when she came before the Court seeking grant of letters of administration, she brought documents purporting to show that the property was still registered **in the name of the deceased**. Who made such previously-unknown records? Are they genuine records? Where did she get them from?

- (ii) When *Rose Kaiza* went before the Court of Appeal, she showed documents indicating that the document of title for Plot No. Mombasa/Block XXI/166 in the name of the deceased had been cancelled,

and a title deed issued *in the name of the interested party*; but when she now appeared before this Court seeking grant of letters of administration, she was denying that the said property was registered in the name of **Angelo Mpanju Kaiza**.

(iii) The abstract of title for Plot No. Mombasa/BlockXXI/166 which was produced by the petitioner during the High Court and Court of Appeal hearings of her case, are entirely different from the one she now brings before this Court to support her claim for grant of letters of administration and this suggests that there is an attempt to deceive the Court.

Learned counsel urged that the petitioner, who well knew that the question of *proprietorship*, in relation to Plot No. Mombasa/Block XXI/166 had been finally decided by the Court, had brought before this Court false and fraudulent documents to support her application for grant of letters of administration.

Learned counsel **Mr. Mushelle**, for the petitioner, contested the interested party's application, and urged that his client had believed all along that the property documents which had been placed before the High Court and the Court of Appeal, were forged. Counsel submitted that even though the petitioner had submitted before the Court documents which were at variance with the ones admitted in suit proceedings before the High Court earlier, she was not to blame, because she "had no right to go to the Lands Registry and change the details"; and so it was "wrong to assume the changes [to the Lands Office documents] were done by her".

**Mr. Mushelle** saw nothing improper with the petitioner repeatedly invoking the name of the **Police**, when treating binding Court decisions with contempt; because "it is the duty of the Police to make investigations". On that basis, counsel urged, even now the petitioner is still dealing with the Police, believing that both the High Court and the Court of Appeal had relied on forged documents and arrived at wrong decisions.

Learned counsel **Mr. Mogaka** contested **Mr. Mushelle's** contention regarding the petitioner's position in this matter, and cited ss. 1A and 1B of the Civil Procedure Act (Cap. 21, Laws of Kenya) as carrying the principle that both **counsel and their clients** are under duty to abide by the binding decisions of the Court. Counsel urged that it was an abuse of the process of the Court for the petitioner to assume she was dealing with forgeries of documents, in a matter already the subject of clear findings and holdings of the High Court and the Court of Appeal. Counsel urged that the petitioner, by producing conflicting records before the Court, and seeking to secure Court orders while selectively using some of them in a secretive manner, was committing perjury.

**Mr. Mushelle** in attempting to defend the conduct of the petitioner gave the impression that this matter should be perceived as a competition for property between siblings: but I hold that such a position cannot qualify the principle that judicial decisions and orders carry a final authority and must be complied with.

All the matters of fact relating to testacy, and to plot No. Mombasa/Block XXI/166, had been carefully and judicially assessed by both the High Court and the Court of Appeal, and laid to rest by virtue of specific, binding orders. The petitioner's attempts to go behind such orders, on the pretext that she, working with some Police officers known to herself, can at this stage produce information of legal significance and which supersedes the authority of the judicial decisions, are reckless acts of contempt which I hold to be punishable under the law.

The petitioners, **Rose Kaiza** and **Badru Abdulrahman Mohamed**, filed a petition before the High Court on **20<sup>th</sup> January 2010** seeking grant of letters of administration for the estate of one **Miriam Nakaiza Abdalla**. The petitioners described themselves as daughter and grandson of the deceased, and declared that

**"Every person having an equal or prior right to a grant of representation herein has consented hereto (or has renounced such right) ...."**

The petitioners declared that the deceased had died intestate. In the schedule of assets set out in their affidavit, the petitioners listed only one item, L.R. No. Mombasa/Block XXI/166. On the basis of the petition, this Court granted to

the petitioners letters of administration intestate on **20<sup>th</sup> April, 2010**. The petitioners then moved fast, using the said grant of letters of administration intestate, to obtain orders in relation to L.R. No. Mombasa/Block XXI/166 on **28<sup>th</sup> April, 2010**: and on the basis of these orders, they attempted to take charge of the management of L.R.No. Mombasa/Block XXI/166 and to deal with rental arrangements.

The facts show clearly that the first petitioner, **Rose Kaiza**, had deliberately given false information to the Court, and it is on that basis she was granted letters of administration intestate.

**Rose Kaiza** knew well, from past final decisions of the High Court and the Court of Appeal which marked the end of proceedings she had originated, that the deceased had not died intestate, and that the property L.R. No. Mombasa/Block XXI/166 had been **lawfully transferred** to the interested party during the lifetime of the deceased.

In aid of her unusual and most inappropriate applications, 1<sup>st</sup> petitioner has placed before this Court documents which appear to be false and perjured.

The 1<sup>st</sup> petitioner has stated on record before this Court that some persons in the Police Department and in the Criminal Investigation Department have been supplying her with the apparently-false documents that she has placed before the Court.

Apart from the appearance that certain crimes have been committed as indicated hereinabove, it has become clear to this Court that the petitioners, and in particular 1<sup>st</sup> petitioner, have nothing but contempt for the final decisions of the High Court and the Court of Appeal.

I will make orders and direct as follows:

- (1) ***The grant of Letters of Administration Intestate of all the estate of Mariam Nakaiza Abdalla issued to Rose Kaiza and Abdulrahman Mohamed on 20<sup>th</sup> April, 2010 is revoked and annulled.***
- (2) ***Consequently, the orders made in favour of Rose Kaiza and Badru Abdulrahman Mohamed on 28<sup>th</sup> April, 2010 in respect of L.R. No. Mombasa/Block XXI/166 are also revoked and annulled..***
- (3) ***The Deputy Registrar shall place a certified copy of this Ruling, together with the information on file, including the earlier proceedings in the High Court and the Court of Appeal, before the Hon. The Attorney-General on priority, to the intent that the likelihood of offences relating to (i) the integrity of the judicial process, (ii) corruption and/or (iii) abuse of office having been committed by certain persons, shall be fully investigated and the prosecution of suspects conducted.***
- (4) ***The petitioners shall bear the interested party's costs in these proceedings.***

**DATED and DELIVERED at MOMBASA this 2<sup>nd</sup> day of June 2010.**

**J.B. OJWANG**

**JUDGE**

Coram: *Ojwang, J.*

Court Clerk: *Ibrahim*

For the Petitioners: *Mr. Mushelle*

For the Interested Party: *Mr. Mogaka*

