



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUSIA
Succession Cause 30 of 2007

IN THE MATTER OF THE ESTATE OF MARITA MUSURUVE KIVIHYA

EPHRAHIM AGEDE KIVIHYA.....RESPONDENT/PETITIONER

A N D

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|-------------------|---|----------------|
| 1. JANET NYANDIKO |) | |
| 2. JUDITH KAVERE |) | |
| 3. EDWIN MACHUKI |) | |
| 4. GEORGE KIVIHYA |) | |
| 5. LAURA MICHELLE |) |OBJECTORS |
| 6. FAITH MBOGA |) | |
| 7. MARY KIMUE |) | |
| 8. BRIAN AKOMBO |) | |

R U L I N G

The application before me is a Chamber summons seeking revocation of a grant of letters, and is dated 11.12.2008. Apart from the prayer for revocation the Objector also seeks several other prayers which clearly are only capable of being issued only if revocation is ordered.

The ground upon which revocation is sought is that the petitioner/respondent, concealed from court the fact that the deceased was survived by several other beneficiaries not shown and that one of those shown beneficiaries - Hellen Kamula Kivihya - was already deceased and no substitution had been sought or made.

In reply the respondent/petitioner in her replying affidavit, stated that all the objectors are not beneficiaries and could not have properly

been included in the record of succession as so. He gave detailed descriptions of each objector to show that they were not born by his father and have never lived on the land forming the estate of the deceased. He averred that they were born by the one or other of the husbands of his sisters and have homes, and grew up in those homes. He stated that his only sisters who might seek a share of the estate might be Janet Nyandiko and Judith Kavere whose father called David, married his sister until recently when she left him and came to stay where she was born and where the suit land is.

Sadly, the objector had to proceed in the absence of the petitioner who apparently had been served but failed to turn up in court to defend the objection. While his case, as shown in the replying affidavit, may be strong, nevertheless no one was in court to put their case. It therefore, seems to me to be proper that I open the objection proceedings so that it be done through oral evidence where the evidence of parties can be tested during cross examination.

In the circumstance the objection proceedings is declared proper for full hearing. A fresh hearing date shall be taken presently. Orders accordingly.

Dated and delivered at Busia this 7th day of July, 2010.

D.A. ONYANCHA
JUDGE