



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Succession Cause 47 of 2003

IN THE MATTER OF THE ESTATE OF ILONDANGA MATONYE ----- DECEASED

JULIUS MASINDE ILONDANGA
JULIET MUTAMBI & 2 OTHERS APPLICANTS/OBJECTORS
V E R S U S
BENSON MUJANJI ILONDANGA PETITIONER/RESPONDENT

R U L I N G

In his application dated 12th July, 2006 the applicant seeks orders that the orders of this court made on 22nd September 2005 be reviewed and that the applicant be allowed to contest the application for revocation of grant. Mr. Kiveu, learned counsel for the applicant submitted that the application is brought under **rule 73** of the order rule 49 of the Probate and Administration Rules. Counsel submitted that the application for revocation of grant was allowed as it was deemed the petitioner (applicant herein) had not filed a replying affidavit. The petitioner had given full instructions to his previous Advocates who failed to file a replying affidavit and that the mistakes of his former counsel should not be revisited on the petitioner.

Mr. Nandi, counsel for the objectors opposed the application and submitted that the application is made in bad faith. Counsel submitted that there is no error apparent on the record to warrant review of the court orders. There is no explanation on the long delay on the part of the applicant to file the application and that the applicant has not surrendered the initial grant as ordered by the court.

Rule 49 of the Probate and Administration Rules provide for the making of application by summons where no provision is made the rules. **Rule 73** saves the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

The petitioner herein was issued with a grant of letters of Administration on 24th June 2003 in respect of the estate of the late Ilondanga Matonye Khalusi. On 27th November, 2003 the objectors filed an application for revocation of the grant. On 23rd February, 2004 the application for revocation of the Grant was to be heard before Justice G.B.M. Kariuki but the same was adjourned at the instance of the petitioner. Advocate who was given 14 days to file and serve the objection with a replying affidavit on 7th February, 2005 the matter was listed for hearing of the application for revocation and counsel for the petitioner made an oral application to extend time for filing a replying affidavit which had been filed on 19/1/2005. The application to enlarge time was reflected by the court. The application was listed for

hearing on 25th April, 2005 when it was heard and Ruling was delivered on 22nd September, 2005. The grant issued to the petitioner was revoked and the petitioner was directed to return the original Grant to the court.

The effect of the petitioner's application will be that he will remain as the Administrator of the deceased's estate. In the application for the grant of the letters of Administration, the petitioner included the objectors as beneficiaries. The objectors contend that the petitioner is not the deceased's son and that he did not involve them when he filed the Succession Cause. The petitioner's apprehension is that he will be disinherited.

Given the above background I do not find the need to review the orders of this court issued on 22nd September, 2005. The petitioner still has the opportunity to claim his share of the estate once the same is being distributed. No application for confirmation of the Grant has been made. The shares of each beneficiary has not been identified. For purposes of safeguarding the estate, I do order that a fresh Grant of Letters of Administration be issued to **JULIUS MASINDE ILONDANGA** and **JULIETA MUTAMBI**. The objectors should file their application for confirmation of the Grant and the Petitioner shall be at liberty to object to the mode of distribution proposed by the four objectors. I do not find that the orders have caused any miscarriage of justice.

In the end I do find that the application lacks merit and the same is dismissed. No orders as to costs.

Delivered, Dated and Signed at Kakamega this 29th day of October, 2009

SAID J. CHITEMBWE
J U D G E