



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT MALINDI**

**Succession Cause 30 of 2004**

**IN THE MATTER OF: The Estate of the late OMAR NAJI SAID - DECEASED**

**AND**

**IN THE MATTER OF: Petition for Letters of Administration Intestate of the above named  
deceased by TWALIB OMAR NAJI, MANSOUR NAJI SAID, ABDULLAH NAJI SAID and**

**MOHAMED SALIM BADAMANA**

**R U L I N G**

By an application by way of Notice of Motion, pursuant to the provisions of Rule 63 of the Probate & Administration Rules and Order XLIV r. 1, and 3 of the Civil Procedure Rules and all enabling provisions of the law, the applicant seeks orders:

- (a) That the honourable court be pleased to **Review** the orders granted to the petitioner on 25<sup>th</sup> of May 2005 by including Title No. Nairobi/BLOCK 104/337 as part of the property of the Estate available for distribution.
- (b) The costs of, and incidental to this application be provided for.

The application is based on the grounds, inter-alia.

1. That the grant of letters of administration intestate of the estate of the above-named deceased person was issued to the applicants on the 24<sup>th</sup> September 2004 and later confirmed by an order of this honourable court on the 25<sup>th</sup> day of May 2005.
2. That it has since come to the attention of the applicants that the deceased owned a property known as Title No. Nairobi/Block 104/337 situated in Nairobi.
3. That the applicants did not have a means of establishing the extent of the estate of the deceased independently and they relied on information provided to them by the children of the deceased. As a consequence Title No. Nairobi/Block 104/337 was unknowingly left out at the time the petition and all subsequent applications.
4. That apart from title No. Nairobi/Block 104/337, personal representatives of the deceased have distributed the rest of the property of the deceased.

5. That for title No. Nairobi/Block 104/337 to be available for distribution, it is necessary that the honourable court be pleased to review the order dated the 25<sup>th</sup> May 2005 by including Title No. Nairobi/Block 104/337 as part of the property of the Estate of the Deceased.

6. That the honourable court has the power and the jurisdiction to ensure that the ends of justice are met.

The application is predicated upon the annexed affidavit of Twalib Omar Naji, Mansour Naji Said, Abdallah Naji Said and Mohammed Salim Badaman sworn on the 12<sup>th</sup> day of February 2008 at Malindi.

On behalf of the applicant, it was argued that they are the personal representatives of the deceased, **Omar Naj Said**, who died on 10<sup>th</sup> December 2003. Appointment by the court was made on 28<sup>th</sup> of September 2004 as per “**exhibit PRI**”. The said grant was duly confirmed by an order of this honourable court on 25<sup>th</sup> May 2005 as per a copy of the said order marked **Exhibit “PR2”**.

On 23<sup>rd</sup> of December 2004, **Fahmi Said Islam**, a nephew of the deceased, brought to their attention a certificate of lease in respect of Title No. Nairobi/Block 104/337 in the name of the deceased as per exhibit “**PR3**”.

Upon discovery they mandated professor Abdullah Naji Said, one of the deceased’s personal representatives, to verify the ownership of the property. That enquiries have now confirmed that the property was rented to a **Mr. Hassan Kassim** who paid to him the accumulated rent arrears of shs. 25,000/= per month, which has been distributed to the beneficiaries of the estate in the same proportions set out in the honorable court’s order aforesaid.

That after the death of the deceased, as a family, we entrusted the duty of examination of all the record pertaining to his property upon his children. The said children inadvertently omitted property known as Title No. Nairobi/BLOCK 104/337 situated in Nairobi.

I have carefully analysed the evidence in support of the application and is persuaded that the application is merited.

Accordingly, I grant the application in terms of prayer 1 only.

DATED and delivered at Malindi this 19<sup>th</sup> day of May 2008.

**N. R. O. Ombija**

**JUDGE**

Mr. Ole-Kina for applicant