REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

P & A CAUSE NO. 57 OF 1998

IN THE ESTATE OF

YONAH MAKHANU BUTALI ……. DECEASED

AND

DANIEL NAMWENYA MAKHANU ……. PETITONER

R U L I N G

Fanice Nasipwondi Wakwabubi seeks to be made a co-administrator of the estate of Yonah Makhanu Butali (deceased). She wants to replace the late Daniel Namwenya Makhanu her brother who had been appointed as one of the administrators of the aforesaid Estate before his demise. She has even obtained limited letters of administration to administer the estate of Daniel Namwenya Makhanu (deceased). The application is said to be brought under the provisions of Section 74 of the Law of Succession Act. The summons is supported by an affidavit she swore on 9th April 2003.

The remaining two administratrixes opposed the summons by filing grounds of opposition. They complain that the applicant was not candid to this court because she did not disclose the fact that she was married elsewhere hence she is not entitled to administer the deceased's estate. They also accused the applicant for intermeddling with the estate of Yonah Makhanu Butali. It is also averred that she did not disclose her interest save for the fact that she is armed with a limited grant of representation to the estate of Daniel Namwenya Makhanu.

The provisions of Section 74 of the Law of Succession Act states:

> *"Errors in names and descriptions, or in setting out the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the court and the grant of representation, whether before or after confirmation, may be altered and amended accordingly."*

It is clear from the above provisions that the prayers made by the applicant are unavailable through section74. No other section was cited to enalbe me exercise my discretion or jurisdiction. Parties are deemed to know the provisions under which they can approach the court to give them their rights. On this score I am not convinced that the applicant has properly established her case.

The applicant has averred that she is bringing this application as the legal representative of the estate of one Daniel Namwenya Makhanu (deceased). In her affidavit she states that she has obtained limited letters of administration. She did not disclose her relationship with the late Yonah Makhanu Butali. She also failed to annex in her affidavit a copy of the grant of limited letters of administration. I am not satisfied that the applicant has disclosed her interest in the estate of Yonah Makhanu Butali (deceased).

On the other hand the Respondent's grounds of opposition raised on factual matters which can be of evidential value if they were deponed in an affidavit. They remain useless in evidence if not stated under oath.

The upshot therefore is that the chamber summons is not well founded. It is dismissed with costs to the Respondents.

DATED AND DELIVERED THIS 21st DAY OF January 2005

J.K. SERGON

JUDGE