REPUBLIC OF KENYA

Succession Cause 376 of 2000

IN THE MATTER OF THE ESTATE OF PAUL ANDOLE LUBALE – DECEASED

B E T W E E N

LAWRENCE NANDI ANDOLE …… PETITIONER/RESPONDENT

A N D

JOHN LUSALA ANDOLE …….…….. OBJECTOR/APPLICANT

R U L I N G

The Objector/Applicant, John Lusala Andole, filed by way of Chamber Summons an application dated 19-8-2003 seeking orders that the Grant of Letters of Administration made to the Petitioner/Respondent on 26-6-2001 be revoked and a fresh Grant be made to the Applicant instead. The basis for the making of the application was that the Petitioner has failed to apply for confirmation of the Grant for a period of over one year. Mr. Mukavale, Advocate, who appeared for the Applicant urged the court to grant the application which proceeded exparte as the Petitioner did not appear in court on the day of the hearing although the date had been taken by consent in the court registry.

I have perused the application. Under Section 76 (d) (i) of the Law of Succession Act, Chapter 160 of the laws of Kenya a Grant of Letters of representation may be confirmed at any time, if the court decides either of its motion or on application by any party interested that the person to whom the Grant was made has failed, after due notice and without reasonable cause, inter alia, to apply for confirmation of the Grant within one year from the date thereof or such longer period as the court has ordered or allowed.

The procedure for seeking annulment or revocation of the Grant is set out in Rule 44 of The Probate and Administration Rules. Under Rule 44, an objector/Applicant must apply in FORM 107 which requires that a ***"Summons for revocation or annulment of Grant"*** be filed. The application made by the applicant did not comply with this requirement as the application was by Chamber Summons. The Summons for revocation or annulment of Grant is required by Rule 44(2) of the said rules to be accompanied by an affidavit of the Applicant in Form 14. Such affidavit is titled ***"Affidavit in support of Summons for the revocation or annulment of Grant."*** The Applicant did not meet this requirement either as the affidavit filed was titled ***"Supporting affidavit."*** More importantly, the application, once made, is required to be followed by a Notice in Form 70 signed by the Registrar addressed to the Applicant requiring him or her to attend court to take directions as to what persons if any, shall be served by the applicant with the application and as to the manner of effecting service. It is after directions in this regard are given that the Applicant is required to serve each of the persons so directed to be served with Notice in Form 68. Every person so served may file an affidavit stating whether he supports or opposes the application.

The application before the court was not in compliance with rule 44 (supra) and the Applicant did not take steps stipulated in the said rule. The application was incompetent and it is hereby struck out with no order as to costs.

Dated at Kakamega this 11th day of March, 2005.

G. B. M. KARIUKI

J U D G E