

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)

BETWEEN

JULIUS MASINDE ILONDANGA)

JULIETA MUTAMBI & 2 OTHERSAPPLICANTS/OBJECTORS

V E R S U S

BENSON MUHANJI ILONDANGA PETITIONER/RESPONDENT

RULING

Messrs JuliusMasinde Ilondanga, Julieta Mutambi, JedinaKhanyeleha and Willimina Nyangayi (**the Applicants**) made on 28.11.2003 an application dated 27-11-2003 by way of Summons seeking orders that the Grant of Letters of Administration made to Benson Muhanji Ilonganga, (**the Petitioner**) on 14-2-90 (and not on 24-6-2003 which is the date on which the Grant was issued) be revoked on the grounds that it was fraudulently obtained by making of a false statement and by concealment of material facts from the court.

In their affidavit sworn on 27th November, 2003, the Applicants averred that the Petitioner is not an heir of the deceased and that the Applicants themselves are all children of the deceased, Ilondanga Matonye Khalusi who died in 1990. They averred further that the Petitioner had made the application for the Grant of Letters of Administration in the deceased's estate clandestinely without notifying any of them and that the Petitioner had made a false statement to the effect that he was the son of the deceased. The applicants further averred that they had welcomed the Petitioner into their home when they were away because he had taken care of their old mother and of the land. This, they seemed to say, did not make the Petitioner one of them, much less an heir.

The Petitioner was on 23-2-2004 granted leave to file and serve a replying affidavit to the applicant's application within 14 days. He did not do so for a period close to one year. On 19-1-2005, he filed a replying affidavit without first securing an order for enlargement of time. The Applicants objected to the replying affidavit and after the contest that ensued, the court struck out the replying affidavit. As the applicant's application for revocation was being heard, the Petitioner had no affidavit to contradict or counter any of the averments in the Applicants' affidavit. Such averments remained uncontroverted.

It is my finding that on the material before me, the Applicants established that the Petitioner is not a relative of the deceased, that he made a false statement in the application for the Grant of Letters of Administration when he claimed to be a son of the deceased and the only heir to the estate and that he fraudulently obtained the Grant in his name.

In these circumstances, I have no hesitation in granting the application which I hereby do. I hereby revoke and cancel the Grant of Letters of Administration made on 14-2-90 to Benson Muhanji Ilondanga in the estate of the late Ilondanga Matonye Khalusi. I direct that the Respondent do return to court the original Grant. The costs of this application will be borne by the Respondent.

Dated at Kakamega this 22nd day of September, 2005.

G. B. M. KARIUKI

J U D G E