

IN THE REPUBLIC OF KENYA AT BUNGOMA
Prob & Admin Cause 94 of 2002

IN THE MATTER OF THE ESTATE OF ALFAYO SITATI..... DECEASED

AND

JOHN MAIKUMA SITATI
JOHN APURA KHISA.....PETITIONERS

AND

GLADYS NASIMIYU APURA
JOSEPH SAKWA KHISAAPPLICANTS

RULING

By a preliminary objection contained in a notice dated 25th February 2005, Gladys Nasimiyu Apura and Joseph Sakwa Khisa prayed for this succession cause to be struck out and or dismissed on the ground that the same is incompetent, fraudulent and bad in law. Unfortunately the preliminary objection did not attract any response from the petitioners despite the fact that they were served.

Mr. Kraido, advocate for the applicants, argued to the effect that one Jacob Khisa Sitati, now deceased had been granted letters of administration in respect of the Estate of Alfayo Sitati the deceased. The grant was subsequently confirmed vide Bungoma S.P.M P&A cause no.77 of 1994 on 24th November 1994. The petitioner in this petition was named as a beneficiary in the certificate of confirmation of 24.11.1994. He failed to disclose the existence of the above succession proceedings when he filed this succession cause.

I have no reason not to believe the applicants assertion that the petitioners ought to have approached this Court or the subordinate Court through Bungoma S.P.M. Succession cause no. 77 of 1994 and not through a fresh petition. Consequently, the petition dated 14.10.2002 and its joint supporting affidavit sworn by John Maikuma Sitati and John Apura Khisa are hereby ordered struck out. The preliminary objection is upheld with costs to the applicants.

Dated and delivered this 16th day of November 2005.

J. K. SERGON

JUDGE

In open Court but in the absence of the parties.