



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**CIVIL SUIT NO. 61 OF 2003**

**1.ABDALLA S. KARAMA**

**2.FATHIYA S. KARAMA**

**3.SWABIR S. KARAMA**

**4.MUNAA S. KARAMA**

**5.GHUBESHA S. KARAMA.....PLAINTIFFS**

**= V E R S U S =**

**1.SAID S. KARAMA**

**2.AHMED S. KARAMA.....DEFENDANTS**

**R U L I N G**

In my Ruling dated 18/7/2003 I pointed out that disputes between beneficiaries and administrators should be brought under Civil Procedure Rules, Order 36 by Originating Summons. There is also the provisions of Succession Act, Cap.160 which deals with succession matters and there is set out therein rules of Probate and Administration of Estates of Deceased persons.

This application is now brought under Notice of Motion to strike out the Complaint filed herein and all other proceedings counsel no doubt influenced by my remarks.

Mr. Khatib has strongly opposed this application saying that the Applicants took out P & A 124 of 1997 and obtained a Grant of Probate and to date have refused to distribute the estate. That the stay of Notice To Show Cause will greatly prejudice the Plaintiffs as they have not been paid their lawful shares. That the Plaintiffs are suffering hardship as their shares have not been paid for a considerable time. Mr. Khatib emphasized that the order to be executed was a consent entered by both parties on 7/4/2003 and the same has not been set aside and therefore no party should be allowed to breach the same.

I have perused the order and it is clear at that stage the validity of proceedings was not raised.

Mr. Khatib also pointed out that matters commenced in Order 36 can be converted to suits under Rule 10 thereof and therefore there is nothing to prevent this suit to be continued by a Plaintiff.

The pleadings in P & A No.124 of 1997 have been exhibited. Application for revocation of the Grant appears similar to this suit but does not seek similar orders. This means that if the Plaintiffs in this suit wished to raise the matter of failure to distribute the estate they would have to file application in that file.

It is my view therefore that the Applicants herein have submitted themselves to the jurisdiction of court under this procedure by Plaint having entered into consent orders. They should not be heard to challenge the suit. This would mean trying to abandon their obligations under the consent order they entered into freely.

For these reasons I do not order the suit to be struck off. Rules of Procedure are handmaidens of justice not the mistress.

I therefore dismiss the application.

Costs to be paid out of the estate.

**Dated at Mombasa this 27th day of February, 2004.**

**JOYCE KHAMINWA**

**J U D G E**

**27/2/04**

**Ruling read in present of:-**

**Mr. Akanga – for Kilonzo**

**Absent – Mr. Khatib**

**JOYCE KHAMINWA**

**J U D G E**