

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

PROBATE & ADMINISTRATION NO. 198 OF 2003

LUKA MAI KASUNI :::::::::::::::::::: DECEASED

VERSUS

1. SIMON KIOKO MAI

**2. RAEL MUTAVE MAI ::::::::::::::
PETITIONERS**

RULING

Before me is the application dated 26/1/04. It is brought pursuant to Rule 67 of the Probate and Administration Rules seeking orders that the two applicants Samuel Maweu Luka and Daniel Mutuku Maweu be granted leave to file notice of objection to the petition for letters of administration intestate out of time and that they do file an answer to petition and cross petition and that costs be provided for.

The 1st applicant swore an affidavit dated 26/1/04 in which he states that the petitioners are his younger brother and mother respectively whereas the deceased was his father and 2nd applicant is his son. He states that he approached the chief for an introductory letter to file a petition but found that it had been issued to his younger brother and on checking the court's registry, found the application for grant to have been filed without his consent on 28/7/03. He filed a notice of objection dated 28/7/03 which was not signed by all objectors and hence invalid. He was not aware of the gazettelement of the petition on 18/7/03 and that is why he did not lodge an objection. Though the affidavit in reply is headed as further replying affidavit that is not the case as the replying affidavit was not commissioned and the court gave the Respondents time to have it commissioned but it was not done. The one termed further replying affidavit filed in court on 4/6/04 is the only affidavit in opposition to the application. The application of the applicant is said to be frivolous and an after thought; that if the applicants were indeed serious they should have filed objection within 30 days of gazettelement; that the 2nd objector is a stranger to the proceedings as he is the grandson of the deceased and a beneficiary of the 1st objector.

From that petition filed, the first applicant is listed as a beneficiary to the deceased's estate. 2nd objector is not registered as a beneficiary. Though the 1st applicant is a beneficiary it seems he was not aware of the petition filed. The Respondents have not challenged the assertion that the filing of the petition was done secretly. No reason is given by Respondent for the secrecy. It would have been expected that the family would discuss and agree on who the petitioners would be.

It is the applicants' contention that they were not aware of the gazettelement. The legislature was aware of such eventualities and provided for enlargement of time under Rule 67 of Probate and Administration Rules so that no one is locked out. Rule 60 of the Probate and Administration Rules also provides that any interested party can enter a appearance and file the necessary affidavits. It seems that the legislature was keen to have all who have interests in an estate to be heard. Even if 2nd objector is the applicants' son and should ideally have demonstrated his interest in the estate even at this stage, the court will allow the application so that the objectors can register their objectors. Application dated 26/1/04 is hereby allowed with costs being in the cause.

Dated at Machakos this 20th day of December 2004

Read and delivered in the presence of

R.V. WENDOH

JUDGE