

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CITATION SUCCESSION CAUSE NO. 1 OF 2001

**IN THE MATTER OF THE ESTATE OF : OMAR MOHAMED HATIMY SAID
OMAR MOHAMED**

MANTHURA OMAR MOHAMED

UMI OMAR MOHAMEDAPPLICANTS

- VERSUS -

MUHIDDIN OMAR MOHAMED

MOHAMED OMAR MOHAMED

AHMED OMAR MOHAMED

ABDALLA OMAR MOHAMED

TWAHIR OMAR MOHAMED

HASWA OMAR MOHAMED

KHADIJA OMAR MOHAMED

TEBA OMAR MOHAMED..... RESPONDENTS

R U L I N G

The application by Notice of Motion is brought under the provisions of order 49 rules 5 of the Civil Procedure Rules and Section 47 of the Succession Act and Procedural Rules. It seeks an extension of the orders issued by this court on 23rd November, 2001 requiring that all the parties be served and matter proceed to hearing within a period of 60 days from the date of the said ruling. It is now well over that period which in effect means there are no orders to be extended. Mr. Bryant for the 3rd and 7th Respondents though opposing the application said he was aware it was to the benefit of all the parties involved and therefore any further delay should be avoided.

The 1st and 4th Respondents too concurred that it was to the interest of the estate that all heirs be served. The court had however ordered for the production of accounts to date to show how much rent had been collected and preserved for the estate. It has now transpired that the rent has been collected from December 2001 to date by the three applicants namely, Said Omar Mohamed, Mohiddin Omar Mohamed and Umi Omar Mohamed who have opened a joint Account No.5200086009 with Diamond Trust. The Account as at the 12.6.02 had a total of Kshs.127,000/= and the applicants conceded they had used Kshs.94,000/=. The court wishes to remind them that the money was to be collected and held by them in trust of the estate pending the appointment of an administrator of the estate. They should therefore ensure the Kshs.94,000/= is all banked in the said accounts as well as all money collected thereafter. They are further reminded to keep proper records for purposes of accounting. As the court had earlier in November, 2001 observed, this is a sensitive matter on inheritance and all parties must be given a fair chance to participate in the proceedings. In the circumstances, it is ordered that the other Respondents be

served within 30 days. It is further ordered that the application by summons dated 20.6.2001 be heard on the 17.7.2002 if the parties will not have agreed on an Administrator to the estate. Costs of the application to the Respondents

Dated and Delivered at Mombasa this 14th day of June, 2002.

P.M. TUTUI

COMMISSIONER OF ASSIZE