



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C. SUCCESSION CAUSE NO. 176 OF 1997

IN THE MATTER OF THE ESTATE OF KIBIBI MUSTAFA –

DECEASED

HABIBA

ABDALA

LORDY YUSUF JUMA..... APPLICANTS

V E R S U S

HAFUSA MOHAMED HAMISI ..... RESPONDENT

DRAFT R U L I N G

The application dated 11th January, 2001 seeks to revoke/annul the grant of letters of Administration .

The application as filed is full of defects one of such being the mention of ‘Hafusa Mohamed’ as being the applicant and Mr. Jacob Mati signing as the Advocate of the applicants. It is not in dispute that Hafusa Mohammed is the Administrator of the estate of the deceased Kibibi Mustafa.

Mr. Mati the learned counsel for the applicants namely Habiba Abdalla and Lardy Yusuf Juma conceded those defects but urged this court that the said defects are not fatal and have not taken the Respondent by surprise. In other words he contended that the Respondent is not prejudiced with those defects.

I need not elaborate the jurisprudence evolved on the issue of defects on the face of the application. Suffice shall it be to state that the courts in this type of matters look at the substantial justice and see that no prejudice is suffered by the opposing party. In this case the replying affidavit is filed by the Respondent and cursory glance at its contents show that she has sufficiently and adequately responded and that she is not at all prejudiced by the defects. I therefore disallow the objection raised.

The facts of the application which are contained in supporting affidavit, replying affidavit and further affidavit.

I shall start with paragraphs 2 & 3 of the replying affidavit sworn by the Respondent. It stated inter alia that she was the only surviving relative, that the deceased passed away under her care, control and custody (sic); that the deceased was sister to her mother and that she had another sister besides her mother who also passed away. The sister she was referring presumably is Mwanatime who is the mother of Lordy Yusuf Juma the 2nd applicant. From the limited grant of letters of administration ad colligenda bona issued to the said Lordy (ann. HA – LYJ – 2) her mother passed away on 14th December, 1998. The

petition by the Respondent was filed on 29th January, 1997 which is prior to the death of the said Mwanatime. She was sister to the deceased and was in a degree prior to that of the Respondent who is admittedly a niece of the deceased.

The death of the said sister after the filing of the petition or before the filing of this application, in my humble view, does not make the petition proper as per law. The Respondent definitely did not disclose the material fact of the survivor who had better right to file the petition, at the time the petition was filed. It is also interesting to note that the Respondent described her as '*guardian*' in the form P & A 5 of the petition.

In view of the aforesaid, I need not go much into the facts of this case and order that the grant issued to the Respondent be revoked and the fresh petition be filed considering the relevant facts of the matter. As the matter is not yet complete, I do not make order on costs.

Dated and delivered at Nairobi this 11th day of June, 2002.

K.  
JUDGE.

H.

RAWAL