



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

SUCCESSION NO. 187 OF 2008

IN THE MATTER OF THE ESTATE OF EZEKIEL LUYALI LIYAI

IRENE JULIET OTINGA.....1ST PETITIONER

HOROBA LUYALI.....2ND PETITIONER

VERSUS

JAMES MICHAEL LUYALI.....1ST OBJECTOR

ALEX SHIVATSI LUYALI.....2ND OBJECTOR

BEATRICE LUVUNO KALINGA

(on behalf of MASITZA OROBA LUYALI).....INTERESTED PARTY

RULING

1. By an application dated 30.12.19, Hudson Luseno Liyali seeks the following orders:

1. Spent.

2. The honourable court be pleased to issue a notice to show cause why the administrators of this estate should not be arrested and be convicted for civil jail for contempt of the court orders issued in Mombasa on the 17.12.19 by the honourable Judge Thande.

3. Costs of the application be in the cause.

2. The Applicant states that the Administrators of the estate of Ezekiel Luyali Liyai, deceased have disobeyed the orders of 17.12.19 in that they have withdrawn all the money in account no. 03642769005 in Bank of Africa, Nyali and paid themselves and other beneficiaries to the exclusion of Horoba Liyayi (Horoba). The Administrators together with their lawyers have taken Horoba's 9% share for their personal use. The Court should uphold the rule of law by punishing the Administrators for disobeying the Court Order.

3. The Applicant is the son of Horoba and a brother of the deceased. He has brought the Application as one of the administrators of the estate of Horoba with the authority of the other administrators. The Applicant avers that there is no Court order barring Horoba from being paid as a beneficiary of the estate of the deceased.

4. In her grounds of opposition dated 22.1.2020, Irene Juliet Otinga, the 1st Administrator contended that the Application is an abuse of the process of the Court and seeks to forestall another application filed by the Applicant. The 1st Administrator stated that the Court specifically ordered the Administrators to retain Horoba's 9% share, who died on 9.2.16, until the determination of an application filed by the Applicant. Horoba died before delivery of the judgment of this Court which means she is no longer a beneficiary of the estate. As such, her share reverts to the estate to be shared by the beneficiaries. To her, the Applicant and his adult siblings are trying to inherit the estate of their deceased brother through the back door.

5. I have considered the Application, grounds of opposition and the Applicant's submissions. The 2nd Administrator chose to rely on the 1st Administrators grounds of opposition.

6. The Court order of 17.12.19 directed the bank to release the amounts due to the beneficiaries of the estate of the deceased from the account

held therein by the Administrators. The Administrators were also directed to file an affidavit stating how they have complied with the orders.

7. It is to be noted that 2 days after the said order, the Applicant filed an application dated 19.12.19, under certificate of urgency, seeking that Horoba be replaced in the proceedings herein by the administrators of her estate, namely the Applicant, Kipchumba Fanuel Liyai and Seth Amugumbi Liyai. The Court directed that the same be heard on 22.2.2020. The present Application was filed on 10.1.2020, before the hearing of the previous application.

8. It is common ground that Horoba is deceased. Upon her demise, there is need for a decision to be made regarding her share. This is perhaps what informed the Applicant's previous application dated 19.12.19. The 1st Administrator in her affidavit sworn on 15.1.2020 averred that Horoba's share has been retained in the bank account pending determination of the Applicant's application dated 19.12.19. This being the case, it is at the hearing of that application that a determination will be made concerning Horoba's share. The foregoing being the state of affairs, it cannot be said that the Administrators have disobeyed the Court orders. I need not say more as I do not wish to pre-empt that application, save to say that this Application is an abuse of the Court process.

9. Accordingly, the Application dated 30.12.19 is devoid of merit and is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED IN MOMBASA THIS 5TH DAY OF MAY 2020

M. THANDE

JUDGE

In the presence of: -

..... **for the Applicant**

..... **for the 1st Administrator**

..... **for the 2nd Administrator**

..... **Court Assistant**