



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 558 OF 2013**

**IN THE MATTER OF THE ESTATE OF NASHON MALIKA LUBANGA Alias MALIKA LUBANGA (DECEASED)**

**AND**

**DINAH ANYONA MUTOKO.....PETITIONER**

**VERSUS**

**MUSA LUBANGA MATENDECHERE.....OBJECTOR**

**RULING**

1. Upon going through the court file I have noted that no summons for confirmation of grant have been applied for in the matter. Directions were given by Chitembwe J. on the 26/2/2014 for the petitioner to file an application for confirmation of grant but she never did so. She only filed an affidavit in support of her proposed mode of distribution without an accompanying application for confirmation of grant.

2. The objector on the other hand filed an affidavit in support of his proposed mode of distribution without an accompanying protest to the mode of distribution proposed by the petitioner. Parties proceeded to adduce evidence on their preferred mode of distribution of the estate when there was no summons for confirmation of grant applied for in the case to which the Objector could object/protest to. It is then clear that parties by-passed an important and mandatory procedure in a succession cause. No orders can issue in such a scenario.

3. In view of the foregoing I hereby direct the parties in the matter to make the necessary applications to align the matter with the provisions of the Probate and Administration Rules.

**Delivered, dated and signed at Kakamega this 5<sup>th</sup> day of June, 2020.**

**J. N. NJAGI**

**JUDGE**

Representation:

No appearance for the Petitioner

By consent of Miss Andia through e-mail for the Objector

Petitioner - Absent

Objector - Absent

Court Assistant - Polycap

30 days right of appeal.