



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 556 OF 2004**

**IN THE MATTER OF THE ESTATE OF LYDIA KHAMALISHI (DECEASED)**

**REUBEN BURUDI SATIA ..... CITOR/APPLICANT**

**VERSUS**

**AYUB CHEMANGA ..... 1<sup>ST</sup> CITEE/RESPONDENT**

**EDWARD MAHANGA .....2<sup>ND</sup> CITEE/RESPONDENT**

**MARK MMASI ..... 3<sup>RD</sup> CITEE/RESPONDENT**

**JAIRUS M. WACHIYA..... 4<sup>TH</sup> CITEE/RESPONDENT**

**DAVID MUSWAHL.....5<sup>TH</sup> CITEE/RESPONDENT**

**RULING**

1. The citor/applicant herein has filed an application dated 24/5/2017 seeking for orders that:-

- (a) The orders made on 24-5-2017 in these proceedings be reviewed and/or set aside.
- (b) The application dated 30-3-2012 for confirmation of grant herein be considered as presented.
- (c) Any other further orders be made as the Honourable Court may deem just and expedient.
- (d) Costs of the application be provided for.

2. The orders made by Justice Sitati on the 24/5/2017 were that:-

**“The citees have fifteen (15) days from today to file and serve the succession papers, failing which the citor herein, Reuben Burudi Satia is granted leave to do so.”**

3. The problem before the court is that when Justice Sitati made the order dated 24/5/2017 she forgot to note that the citor/applicant had already filed this Succession cause way back in the year 2004. He could thereby not be ordered to file another succession cause if the citees failed to file a succession cause as ordered. I think the proper order should have been that in case the citees failed to file the succession case as ordered, then the citor was thereby granted leave to proceed with this succession cause.

4. The citees did not comply with Justice Sitati’s orders dated 24/5/2017. The citor/applicant then should be allowed to proceed with this succession cause. By the time Justice Sitati made the order dated 24/5/2017 the citor/applicant had filed summons for confirmation of grant dated 30/3/2012. The citor/applicant should then proceed with his application for summons for confirmation of grant.

5. In the foregoing the orders made by Justice Sitati dated 24/5/17 are hereby reviewed to provide that incase the citees/respondents failed to comply with the order the citor/applicant do proceed with this succession cause. As the citees/respondents failed to comply with the order the citor/applicant is hereby given leave to proceed with the succession cause and to fix for hearing the application for summons for

confirmation of grant dated 30/3/2012. The citor to serve the hearing date on the respondents.

**Delivered, dated and signed in open court at Kakamega this 22<sup>nd</sup> day of May, 2019.**

**J. NJAGI**

**JUDGE**

**In the presence of:**

No appearance for the Citor/applicant

Citor/applicant - absent

Citees/respondents - absent

Court Assistant - George