



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAJIADO**  
**SUCCESSION CAUSE NO. 27 OF 2018**  
**IN THE MATTER OF THE ESTATE OF MAORA**  
**LOLPISIA MAISIAK (DECEASED)**  
**PETITION FOR LETTERS OF ADMINISTRATION INTESTATE BY**  
**BENJAMIN KIMUNYAK MAORA AND DAVID NKAPAPA MAORA**  
**RULING**

The deceased Maora Lolipsia Maisiak died intestate on 6<sup>th</sup> November, 2009 being a resident of Kajiado. According to the annexures attached to the petition by Benjamin Kimanyuk and David Nkapapa Maora his estate composed of real property as referred in LR Kajiado/Elangata WUAS/2, L.R. Elangata Wuas/25. It is also not in dispute that the late Maora Maisiak was married to two wives and blessed with seven (7) children in the first house while the second house had the same equal number of children as supported in the letter from the Chief of the Location dated 4<sup>th</sup> September, 2017.

The two sons from the 1<sup>st</sup> house as children of the deceased petitioned for Grant of Letters of Administration on or before 13<sup>th</sup> April, 2018. The objectors herein also children of the deceased subsequently learnt of it that the petitioners have applied for grant of letters without seeking their consent.

According to the objectors the petition was made without their knowledge or consent as beneficiaries to the estate of the deceased. The petitioners in answer stated that in petitioning for letters they had recognized the objectors as the children of the deceased and beneficiaries to the Estate. They asked the court to admit the petition by issuing them with grant of letters of administration intestate.

It emerges from the skeleton submissions made by both counsels to this petition that the children from the second wife as other beneficiaries received neither the notice nor gave consent to the petitioners. The record also bears me witness that the objectors though listed as beneficiaries to the estate in the letter from the Chief, they have signed no consent to support the petition.

The issue before me at this early state is whether the petition for grant of letters can be revoked or set aside where the other beneficiaries have not consented nor received notice of the petition.

In dealing with this question the court has to make reference to the provisions of Section 76 of the Law of Succession Act. The rule is that once a petitioner has filed the necessary affidavits in cases of intestate administration, the petition must be gazetted in the Kenya Gazette giving a notice of 30 days. Thereafter the petitioners can move to court to be issued with the grant of letters unless there exist an objection to the petition.

Under Section 76 of the Act grant or representation may at any stage be revoked or annulled if the court decides or either on application by any interested party or on its own motion on grounds:

- (1) That the proceedings to obtain the grant were defective in substance
- (2) That the grant was obtained fraudulently by the making of a false statement or concealment from the court of something material to the case
- (3) That the grant was obtained by means of an untrue allegations of fact essential in part of law to justify the grant notwithstanding that the allegations was made in ignorance or inadvertently.

.....

In this case there is prima facie evidence that the petitioners filed the petition without notifying the children of the second family. As stated by the objectors they had no knowledge of the pending proceedings in succession cause No. 27 of 2018. The probate and administration rules requires the petitioners, while making an application for grant of letters to provide the following:

- (a) The petition
- (b) The verifying affidavit
- (c) Affidavit of justification of sureties
- (d) Consent from the beneficiaries of the estate
- (e) The letter signed by the location Chief and death certificate of the deceased.

I have perused the record there was no compliance with the rules in view of the fact that the objectors never signed the necessary consent in support of the petition.

Going by the provisions under Section 76 of the Act as applied to the particulars of the petition, there are serious indictment on lack of consent and misrepresentation of material facts omitted by the petitioners. The affidavits on record shows that the objectors were not notified of the petition before it was applied for and caused to be advertised in the Kenya Gazette.

It is therefore my view that the procedure adopted by the petitioner was irregular and in breach of the provisions of the law of Succession. It has therefore brought into question the legality of the entire proceedings in relation to granting of letters of administration in respect to the estate of the deceased. The defect in the proceeding is not excusable as a mere omission or mistake but which goes to the core of the entire intestate proceedings.

Consequently I find that the proceedings as commenced cannot be left to stand on the basis of breaches under Section 76 of the Act. As a result the proceedings are hereby set aside as being void abintio.

In light of the foregoing under Section 66 of the law of Succession, David Nkapapa Maora and Joseph Tajeu Maora are allowed to proceed to petition for grant of letters of administration intestate for the estate of Maora Lolpisia Maisiak. Given the order made, Succession Cause No. 27 of 2018 is hereby marked as spent and the registry to give the petition a new index number.

Costs of this application be in the cause.

Further mention on 8<sup>th</sup> November, 2018 to monitor compliance.

**Dated and delivered in open court at Kajiado this 20<sup>th</sup> day of September, 2018.**

.....

**R. NYAKUNDI**

**JUDGE**

In the present of:

Mr. Kariuki for the petitioners

Mr. Kabiru for the objectors.