



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO.266 OF 2010

IN THE MATTER OF THE ESTATE OF OJIAMBO MUSEBE-DECEASED

RAPHAEL ORIACHA1ST APPLICANT

BASIL AFWAGO2ND APPLICANT

JOHN BENARD WANZALARESPONDENT

R U L I N G

1. On 20th February 2014 I made the following order:-

“Court: Grant herein was made to the Petitioner on 30th March 2011. It is more than 1 year since. I hereby give the Petitioner 60 days Notice to apply for confirmation hereof (Section 73 of The Law of Succession Act.) Both he and his advocate shall be served with the notice by the Objectors Counsel.”

2. Counsel for the Objector chose to extract a different order, in the following terms:-

“TAKE NOTICE that pursuant to the power conferred by section 73 and 76 (a) (i) of the Law of Succession Act, this court proposes, subject to such representations as may ne(sic) made to the contrary to revoke the grant of representation of the estate of the above named OJIAMBO MUSEBE made on 30th March, 2011 to RAPHAEL ORIACHA, and BASIL OFWAGO,

THE GROUNDS for the proposed action are:-

1. The grant was made on 30th March, 2011 over 3 years ago and Petitioners have not applied for confirmation of the grant.

If you wish to oppose such proposed revocation you may do so by filing within 15 days from this date an affidavit herein stating the grounds of opposition.

Issued at Busia this 27th day of February 2014

DEPUTY REGISTRAR

THE HIGH COURT OF KENYA AT BUSIA

3. I have to insist that the order I granted be faithfully extracted and served afresh. The insistence is borne out of the legal implications that follow such a Notice. The provisions of Section 76 d (i) of The Law of Succession Act gives power to this Court to revoke grant where a person to whom grant has been made has failed, **“after due Notice and without reasonable cause... to apply for confirmation of the grant within one year from the date thereof, or such longer period as the Court has ordered or allowed.”** The implications, no doubt, are dire. This Court issued a 60 day notice and not 15 days as indicated in the Notice extracted by the Objector. Such an important notice cannot be shortened by warrant of a cheeky or careless litigant!

4. The Notice shall be properly extracted and served again. The Notice period shall run from the date of service.

F. TUIYOTT

J U D G E

DATED, DELIVERED AND SIGNED AT BUSIA THIS 9TH DAY OF OCTOBER 2014.

IN THE PRESENCE OF:

KADENYICOURT CLERK

N/A.....FOR PETITIONER

JUMBA.....FOR PROTESTOR