



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 95 OF 2006(OS)

IN THE MATTER OF THE ESTATE OF OMAR MOHAMED HATIMY - (DECEASED)

PUBLIC TRUSTEEPLAINTIFF

VERSUS

1. MOHAMED OMAR MOHAMED
2. AHMED OMAR MOHAMED
3. TWAHIR OMAR MOHAMED
4. ABDALLA OMAR MOHAMED
5. MUHIDIN OMAR MOHAMED
6. SAID OMAR MOHAMED
7. MANTHURA OMAR MOHAMED
8. UMI OMAR MOHAMED
9. TEBA OMAR MOHAMED
- 10.HAFSWA OMAR MOHAMED
- 11.KHADIJA OMAR MOHAMEDDEFENDANTS

RULING

The 5th, 8th, 10th and 11th Respondents have raised a preliminary objection on the 1st Defendants application which basically seeks to have the ruling delivered by Hon. Justice Ibrahim reviewed.

The grounds are that the ruling sought to be reviewed has not been annexed and or exhibited and neither was an order extracted. That the reason for this is that rulings and Judgments contain facts reasons for the decisions and the principles of law applicable hence the requirement to extract the order or decree sought to be reviewed.

I am therefore invited to make a finding that because the ruling sought to be reviewed has not been annexed to the application then the application is fatally defective and it ought to be dismissed.

It is incumbent upon the Court to bear in mind the overriding objective of the Civil Procedure Act and Rules thereunder which are stated thus,

“to facilitate the just expeditious proportionate and affordable resolution of the civil disputes”.

Further article 22(3) (d) provides,

“The Court while observing the rules of natural justice shall not be unreasonably restricted by procedural technicalities”.

In the present case the failure to annex the ruling and or order to be reviewed is a procedural omission which is curable by the fact that the ruling forms part of the proceedings and can be found in the file and so is the order. The preliminary objection has no merit and it is dismissed with costs.

Ruling delivered dated and signed this **6th** day of **November, 2013**.

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M. MUYA

JUDGE

6TH NOVEMBER, 2013

In the presence of:-

Learned Counsel for the 5th, 8th, 10th and 11th Defendant Mr. Khatib

Other Counsels absent