



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**SUCCESSION CAUSE 4 OF 2008**

**IN THE MATTER OF THE ESTATE OF JOSEPH MAINJA NALIMAE(DECEASED)**

**~VERSUS~**

**KENNETH KIBERENGE NALIMAE.....PETITIONER**

**AND**

**SCHOLASTIC CHEMARI WAMBETE.....OBJECTOR/APPLICANT**

**RULING**

The deceased Joseph Mainja Nalimae died intestate on 1/8/2006 and left land parcels nos.E.Bukusu/North Nalondo/275 and E.Bukusu/North Nalondo/283. On 17/1/2008 one of his sons Kenneth Kiberenge Nalimae filed this petition seeking a grant of letters of administration intestate. He provided the names of the beneficiaries who included Mary Nafula Mainja, Mary Nangila Mainja, Irene Naliaka Nalimae and Scholastic Chemari Wambere whom he stated were the widows of the deceased. The grant was issued. When the matter came for the confirmation of the grant there was disagreement on the mode of sharing of the estate. Scholastic had through M/s Nanzushi advocate objected to the sharing which had given her son only 0.5 acres and had not provided for the widows.

On 8/7/2010 the matter was mentioned in court. Kenneth (the Petitioner) was represented by Mr. Were and Scholastic was represented by M/s Nanzushi. It was agreed that the application for confirmation and the objection be heard by way of oral evidence to determine the shares of the beneficiaries. The matter has not been heard.

On 13/10/2011 Mr. Areba for Mr. Were for the Petitioner and M/s Nanzushi for Scholastic came before me and recorded a consent in which the widows of the deceased were to be the joint administrators of the estate in place of the Petitioner who would be considered as one of the beneficiaries of the estate. It was further agreed that the new Petitioners do file a fresh schedule in 14 days to show how the estate would be shared. Lastly, all objection applications were withdrawn. The applications, it should be noted, were by Scholastic.

On 8/3/2012 the Petitioner filed the present application seeking to set aside the consent order on basis that it was illegal and done without his consent and blessings. He also sought that the appointment of the widows as administrators be revoked/annulled. The application was based on the grounds that he had not been consulted before the consent was recorded and that Scholastic was a stranger to the estate who was not a widow of the deceased. He swore an affidavit alleging the same. Mary Nafula Mainja and Mary Nafula Mainja and Mary Nangila Mainja swore a joint affidavit also claiming that they were appointed as administrators without their consent or knowledge and that they were not interested in administering the estate. They stated that they had not instructed M/s Nanzushi to record the consent. The Petitioner swore another affidavit to say that although he was initially the administrator he had since withdrawn following disagreement and that he had asked the family to appoint another administrator. Scholastic swore a replying affidavit in which she states as follows:

*“4. That initially, the applicant filed this petition as an Administrator of the deceased’s Estate but on confirmation, and for numerous objections raised by other family members on distribution, he opted through his advocate M/s Were & Co. Advocates to withdraw from administration in open court and by consent the widows of the deceased were chosen by both counsels as administrators in November 2011 in*

*open court.*

5. *That current petitioners were not sneaked in the petition but by consent substituted by both counsels for applicant and petitioners.”*

The record shows that on 12/5/2010 the Petitioner instructed M/s Were & Co. Advocates to act for him. On 22/2/2011 Scholastic and Irene Naliaka Nalimae filed a notice to show that M/s Lucy Nanzushi & Co. Advocates were acting for them. Even if the Petitioner had instructed Mr. Were and Irene and Scholastic had instructed M/s Nanzushi to record a consent it is clear that Mary Nafula Mainja and Mary Nangila Mainja did not give any instructions to either counsel and did not participate in the consent. The administration of the estate of a deceased person is a serious responsibility with penal sentences. One cannot therefore be dragged into such administration without his knowledge or consent. On this account alone the consent recorded was illegal and is hereby set aside. The consequence is that the four widows of the deceased are not the administrators of the estate. Now that the Petitioner has relinquished his role as the administrator, the dispute goes back to the stage where an administrator has to be appointed. I ask that each party bears his/her own costs.

Dated, signed and delivered at Bungoma this 8<sup>th</sup> day of October, 2012.

**A. O. MUCHELULE**  
**JUDGE**