



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**  
**AT KISUMU**

**CORAM: KWACH, OMOLO & TUNOI, J.J.A.**

**CIVIL APPEAL NO. 236 OF 2000**

**BETWEEN**

**MORRIS MUTULI .....1ST APPELLANT**

**WYCLIFFE MUTULI .....2ND APPELLAND**

**AND**

**ALICE MUTULI KOLA .....1ST RESPONDENT**

**PHANICE ACHANDO MUTULI .....2ND RESPONDENT**

**DOROTHY ACHITSA MUTULI .....3RD RESPONDENT**

**(Appeal from the ruling and order of the High Court of  
Kenya at Kakamega (Mr. Justice Tanui) dated 9th june,  
2000**

**in**

**H.C.SUCCESSION CAUSE NO. 359 OF 1995)**

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

The appellants Morris Mutuli and Wycliffe Mutuli have appealed to this Court against that part of the decision of Tanui J dated 9th June, 2000 by which the learned Judge restricted the right of the appellants to make further applications in the succession cause he was hearing, except with Thies apppremlilsasnitosn . were the sons of the late William Mutuli (the deceased) who died on 25th October, 1994. The deceased left behind 4 wives, numerous children and a substantial estate comprising parcels of land, cash in the bank and other assets. He died intestate but a grant of letters of administration intestate was issued to his wives Alice Mutuli, Phanice Mutuli and Dorothy Mutuli , the respondents, on 25th October, 1996.

The appellants were unhappy with the grant being made to the respondents and on 28th March, 2000, they applied under section 76 of the Law of Succession Act (Cap 160) for the revocation of the grant. They set down the grounds upon which they sought the order of revocation one of which was that the grant was issued without a petition being filed. That allegation was patently false and the appellants knew as much.

The learned Judge dismissed the application and at the end of his ruling he said:-

***"I note that there have been numerous applications in this cause which as Mr Fwaya has printed out have deliberately delayed due and proper administration of this estate and hardship is likely to be caused to some of the beneficiaries especially young children of the deceased. For this reason I direct that no further application should be made except with my consent."***

That is the order which the appellants are complaining about in this appeal. They say it restricts their right to unimpeded access to the judicial process; that they were not given an opportunity to be heard before the order was made; and that there was no prayer for it in the application. There is really no substance in any of these complaints. The learned Judge did not say that the appellants were permanently barred from making any application. All he said was that such applications would be subject to the consent of the court being obtained. That is a perfectly proper order for a court to make to ensure that a party does not manipulate the process of the court to his own advantage and to the detriment of innocent parties. The Judge gave his reason for the restriction which was that hardship was likely to be caused to some of the beneficiaries and in particular the deceased's young children. That is the kind of order the Judge was entitled to make, and had the power to make, in exercise of his inherent jurisdiction and was in full accord with rule 73 of the Probate and Administration Rules which states:-

***"73.Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."***

The appellants who are mature adults cannot be allowed to embark on a course of conduct in relation to the administration of the estate of the deceased which would be likely to prejudice the rights of other beneficiaries, and in particular young children some of whom may be younger than or of the same age as their own children. That is to say the least selfish.

For these reasons this appeal must fail and it is dismissed with no order as to costs.

**Dated and delivered at Kisumu this 29th day of November, 2002**

**R.**

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**JUDGE OF APPEAL**

**O.**

**KWACH**

**R.S.C.**

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**JUDGE OF APPEAL**

**OMOLO**

**P.**

.....

**JUDGE OF APPEAL**

**K.**

**TUNOI**

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**