



**SALMA KHALEF .....APPLICANT**

**VERSUS**

**MOHAMED AHMED SALIM .....RESPONDENT**

**RULING**

This is an application under the provisions of Section 76 of the Law of Succession Act and Rule 44 and 73 of the Probate and Administration Rules. It seeks for orders that:-

- 1. The grant of Letters of Administration to MOHAMMED AHMED SALIM issued on 13<sup>th</sup> June 2006 be revoked.**
- 2. That a fresh grant of probate be made to SALMA KHALEF and MOHAMED AHMED SALIM.**

The application is supported by an affidavit sworn by the said Salma Khalef on 28<sup>th</sup> August 2009. She alleges as follows against the Respondent.

- *That the deceased Raya Salim Mohamed died on 18<sup>th</sup> July 2001 and letter of administration intestate was made to Mohamed Ahmed Salim on 13<sup>th</sup> July 2006.*
- *That the said grant was obtained fraudulently by concealment from the court of the existence of a valid written Will of the deceased.*
- *That the failure to disclose the existence of a Will was deliberate as its existence was within the Respondent's knowledge.*
- *That considering the Respondent is the sole administrator if not restrained by an order of this Honourable court may alienate the Estate properties to our detriment.*

From the record, it comes out that the Applicant and her siblings are the children of the late Khalef a son of the deceased and the brother to the Respondent.

They claim that the deceased left a Will and in there left a gift to them. The alleged Will is annexed as an exhibit.

The said document is witnessed by a Kadhi, in Mombasa. It also becomes clear that the dispute on distribution of the Estate is pending before the Kadhis Court in Civil Case (OS) 59 of 2009.

The Respondent in his Replying Affidavit sworn on 14<sup>th</sup> December 2009 refers to the said case and states that as a result the issues raised in the application are sub-judice and an abuse of the Court process. He claims that his mother was intestate when she died and that the alleged Will was a forgery by the Applicants. Also that the said document contravenes the legal principles of testacy and Islamic testamentary principles.

I have considered all matters and the evidence before me. I do find that the question in dispute in this application are similar to those raised in the Chief Kadhis Civil Case (OS) No. 59 of 2009 which is partly heard and pending in the said court. It is in respect of the question of distribution of the Estate of the deceased.

Both Parties are Muslims and the Estate is that of a Muslim. None of them has denied the jurisdiction of the Kadhi's Court.

I think that it is best and prudent that this court awaits the decision of the Kadhi's Court on the matters raised. The

questions herein are sub-judice in the circumstances.

Be that as it may it is clear that the Grant herein which has been confirmed in essence has given absolute powers for the Respondent as Administrator and he is in a position to proceed to distribute and even dispose of the Assets of the Estate. He has the ability to part and dispose of the subject matter of the suit.

In the circumstances, it is fair and just that the Certificate of confirmation of Grant dated 14-02-2008 is stayed pending the hearing and determination of the case before the Kadhi's Court.

As a result I do hereby direct and Order that the Certificate of Confirmation of Grant dated 14.02.2008 is hereby suspended and its use stayed in all aspects pending the determination of Chief Kadhi's Civil Case No. 59 of 2009. Orders accordingly. Liberty to apply is granted.

**Dated and delivered at Mombasa this 27<sup>th</sup> day of July 2010.**

**M. K. IBRAHIM**  
**J U D G E**

27/7/2010

Mr. Ibrahim, J

Court clerk – Kazungu

Mr. Abed for the Applicant

Mr. Ngetich for the Respondent

ORDER:

Ruling delivered in their presence.

**IBRAHIM, J**