



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT HOMA BAY**  
**PROBATE & ADMINISTRATION NO.4 OF 2018**

**IN THE MATTER OF THE ESTATE OF: OMOLO OSORE alias ERASTO OMOLO  
OSORE..... DECEASED**

**BETWEEN**

**PATRICK OPIYO ORWA.....OBJECTOR/APPLICANT**

**AND**

**ISDORA OPIYO OMOLO.....PETITIONER/RESPONDENT**

**RULING**

1. Patrick Opiyo Orwa, the objector/applicant herein moved the court by way of summons for revocation or annulment of grant dated 3<sup>rd</sup> November, 2017 under section 76 (a) of the Law of Succession Act and Rules 40 (1) 44 (1) and 73 of Probate and Administration Rules. He is seeking the following orders:

- a) The grant of letters of administration intestate made to the said Isdora Opiyo Omolo in this matter on 3<sup>rd</sup> November, 2017 he revoked/nullified.
- b) The honorable court thereafter be pleased to order that the petition made by the respondent/petitioner was annuity and the same be set aside and the applicant/objector be enjoined as a beneficiary.
- c) The honorable court be pleased to declare that land parcel No. Kanyada/Kotieno/Katuma 'A'/1979 be apportioned between the petitioner/respondent and the applicant/objector as both beneficiaries of the estate of the deceased.
- d) The cost of this application be granted to the applicant/objector.

2. The application is premised on the following grounds:

- a) That the grant of letters of administration intestate had been issued to the respondent/petitioner on the 3<sup>rd</sup> November 2017 be revoked/nullified.
- b) That the respondent has misrepresented herself to the honorable court as the only beneficiary of the estate of the deceased person leaving the applicant/objector as the chief had indicated in his letter of introduction.
- c) That the respondent/petitioner has not taken into consideration that the applicant/objector has established his homestead on land parcel No. Kanyada/Kotieno/Katuma 'A'/1979 as was the wish of the deceased.
- d) That the applicant/objector is the nephew of the deceased and the deceased prior to his demise had wished that the applicant/objector could be apportioned a piece of land to stay in.
- e) The respondent/petitioner shown the applicant/objector a place on this piece of land to erect his homestead and has now refused to list the applicant/objector as one of the beneficiaries.
- f) The respondent/petitioner has now started to threaten the applicant/objector with eviction contrary to the wishes of the deceased

who had grown fond of the applicant/objector prior to his death.

g) That the applicant/objector may suffer irreparable loss if the orders sought is not granted.

h) This application is brought in good faith and not meant to delay the precious time of the honorable court.

3. The application was opposed by the respondent/petitioner on the following grounds:

a) That the respondent/petitioner was the surviving widow of the deceased.

b) That the applicant/objector was a nephew of the deceased herein and therefore not entitled to be a beneficiary.

4. Both parties agree as to the relationship of petitioner and that of the objector to the deceased. The deceased herein died interstate and was survived by the respondent/petitioner, his widow and two issues. His estate will therefore be governed by the provisions of section 35 of the Law of Succession Act. It caters for the surviving spouse and the children.

5. The applicant/objector and his grandmother contended that the deceased herein had adopted him traditionally. He has not however persuaded this court to belief that, that was the case. The respondent/petitioner on the other hand has contended that she accommodated him after the death of her husband, the deceased herein.

6. Since the applicant/objector is not envisaged by the law as a beneficiary, he has not discharged his burden to prove that that the deceased had adopted him as a son. His application is dismissed with costs.

7. I have noted that the respondent/petitioner has not rendered accounts as envisaged under section 83 (g) of the Law of Succession Act. I therefore order that she does so within 60 days of this ruling failure to do so, the grant with be automatically be revoked.

**DELIVERED and SIGNED at HOMA BAY THIS 24TH DAY OF NOVEMBER, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE**