



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**PROBATE & ADMINISTRATION NO. 217 OF 2011**

**IN THE MATTER OF THE ESTATE OF:**

**PAUL ONYANGO KWEYU.....DECEASED**

**BETWEEN**

**CHRISTINE ACHIENG.....PETITIONER/ RESPONDENT**

**AND**

**PATRICK KWEYU OTSIENO.....OBJECTOR/APPLICANT**

**RULING**

1. The objector/applicant herein moved the court by way of summons for revocation or annulment of grant herein. He is seeking the following orders:

- a) That the grant of letters of administration issued to Christine Achieng be revoked and or annulled.
- b) That the grant of letters of administration in respect of the estate be issued to him and Christine Achieng.

2. The application is premised on the following grounds:

- a) That the grant was made fraudulently by making a false statement or by concealment from court of material facts; and
- b) That the applicant is a nephew of the deceased herein while the respondent is the widow of the deceased herein.

3. The application was opposed on grounds that:

- a) The respondent is the widow of the deceased herein.

4. According to form P. &A. 5, **Paul Onyango Kweyu** the deceased herein was survived by the petitioner and they had no children. This was confirmed by the objector. Section 36 (1) of the Law of Succession Act provides:

**(1) Where the intestate has left one surviving spouse but no child or children, the surviving spouse shall be entitled out of the net intestate estate to—**

- (a) the personal and household effects of the deceased absolutely; and**
- (b) the first ten thousand shillings out of the residue of the net intestate estate, or twenty per centum thereof, whichever is the greater; and**
- (c) a life interest in the whole of the remainder:**

**Provided that if the surviving spouse is a widow, such life interest shall be determined upon her re-marriage to any person.**

It is clear therefore that the petitioner is the sole heir of the deceased herein subject to the proviso in paragraph (c) of section 36 (1) of the Law of Succession Act.

5. The application is not only misguided but it is based on greed. The same is dismissed with costs.

6. The petitioner is given 60 days to render accounts in compliance with section 83 (g) of the Law of Succession Act.

**DELIVERED and SIGNED at BUSIA this 25<sup>th</sup> day of February, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**