



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**PROBATE & ADMINISTRATION NO.71 OF 2010**

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

**PETER ONYANGO KWOPA .....DECEASED**

**BETWEEN**

**GILBERT OGUTU WABWIRE.....1<sup>ST</sup> APPLICANT**

**PETER ONYANGO WABWIRE.....2<sup>ND</sup> APPLICANT**

**AND**

**VICTORINA OSUWO WABWIRE..... 1<sup>ST</sup> RESPONDENT/ ADMINISTRATRIX**

**AND**

**SABASTIAN MAGERO OGOLA .....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The applicants herein moved the court by way of chamber summons dated 6<sup>th</sup> June 2013 under section 76 of the Law of Succession Act They are seeking the following orders:

- a. That this honourable court revokes the certificate of confirmation of the grant herein.
- b. That costs of application be borne by the respondent.

2. The applicants raised several grounds that can be summarized as follows:

- a. That the deceased herein died without a family.
- b. That the second respondent featured for the first time in the sworn affidavit for the confirmation of grant.
- c. That the said second respondent was not entitled to inherit from the deceased.
- d. That the first respondent was illiterate and could not have filed the documents on her own.

3. On the 4<sup>th</sup> December 2019, the parties sought to have the application disposed of by way of written submissions. It was only the applicants who complied.

4. Upon my perusal of the supporting and replying affidavits, the submissions of the applicants as well as the record, the following facts emerge:

- a. That in Form P. & A. 5, the only beneficiary for the estate of the deceased listed was Victorina Osuwo Wabwire.

b. In the liabilities for the estate of the deceased, nothing was listed and the second respondent was not indicated to be owed anything by the estate of the deceased.

c. I took note of the fact that the 1<sup>st</sup> respondent had thumb printed her documents and this confirms that she was illiterate. She may have been taken advantage of.

5. The deceased died without a nucleus family. His mother left him while young and was married elsewhere. His estate is therefore governed under the provisions of section 39 (1) of the Law of Succession act that provides:

**Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority—**

**(a) father; or if dead**

**(b) mother; or if dead**

**(c) brothers and sisters, and any child or children of deceased brothers and sisters, in equal shares; or if none**

**(d) half-brothers and half-sisters and any child or children of deceased half-brothers and half-sisters, in equal shares; or if none**

**(e) the relatives who are in the nearest degree of consanguinity up to and including the sixth degree, in equal shares.**

6. The provision for the second respondent who is neither a relative nor shown to be owed by the estate of the deceased, coupled with the fact that the first respondent is illiterate, persuades me to revoke the grant herein.

7. I therefore revoke the grant issued to the first respondent and appoint both applicants to be joint administrators of the estate of the deceased herein. I am giving the administrators 60 days within which to file a proposal for distribution and for the confirmation of the grant.

8. Costs shall be in the cause.

**DELIVERED and SIGNED at BUSIA this 12<sup>th</sup> day of March, 2020**

**KIARIE WAWERU KIARIE**

**JUDGE**