



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

SUCCESSION CAUSE NO. 277 OF 2014

**IN THE MATTER OF THE ESTATE OF MATAYO SHIUNDU & AKWATA OTINGA
(DECEASEDS)**

AND

ANDEREA WANZALA alias ANDEREA WANJALA SIKAUTI.....PETITIONER

VERSUS

CHRISTOPHER OTINGA SKAUTI.....1ST OBJECTOR

SIKAUTI WAFULA ONDwas.....2ND OBJECTOR

RULING

1. These are unusual Probate and Administration proceedings as they purport to relate to two Deceased Persons namely Matayo Shiundu (Matayo) and Akwata Otinga(Akwata). Both are said to have died intestate. Matayo died on 20th August 1987 while Akwata died on 16th February 1996. The Petitioner to both Estates is Andrea Wanzala alias Andrea Wanzala Sikauti.
2. Grant was made herein on 22nd October 2014 and confirmed on 8th May 2015. That grant is now under challenge and Christopher Otinga Sheunda and Sikauti Wafula Ondwas seek to impeach it vide a Summons for Revocation which is undated.
3. The hearing of the Summons was by way of viva voce evidence. From the evidence it emerged that land parcel South Teso/Amukura/182 was jointly registered in the names of Andrea Wanzala, Matayo Sieunda and Akwata Odinga each with 1/3 share. As the three were proprietors in common, each of their share would upon death devolve to their respective Beneficiaries. Matayo and Akwata are dead. Andrea Wanjala is still alive and the Petitioner herein.
4. From the evidence, the 1st Applicant is the son of Matayo while the 2nd Applicant is the son of Akwata.
5. In his testimony, the Petitioner stated that it was his desire that the children of two Deceased persons take up their parents shares. He however, sought to explain that he was entitled to present this petition as he invited Matayo and Akwata onto his land.
6. The Petitioner, it bears repeating is the brother to Matayo(Deceased) and Akwata (Deceased). Although it is unclear whether Matayo and Akwata had spouses and if so whether they are still alive, the 1st Applicant being the son of Matayo would have priority over the Petitioner to the intestate Estate of Matayo. Similarly, the 2nd Applicant being the son of Akwata would have priority over the Petitioner to

his father's estate. This would be in terms of the provisions of Section 38 of the Law of Succession Act which reads:-

Where an intestate has left a surviving child or children but no spouse, the net intestate estate shall, subject to the provisions of section 41 and 42, devolve upon the surviving child, if there be only one, or be equally divided among the surviving children.

7. In his Application for Confirmation the Petitioner stated that he was the only surviving Dependant of Matayo and Akwata. This was a false Statement. Clearly, the Application for Revocation has merit and must succeed. This Court hereby Revokes the Letters of Administration issued herein to the Petitioner on 22nd October 2014 and confirmed on 8th May 2015. I make no order as to costs as the protagonists herein are close relatives.

Dated, signed and delivered at Busia this 14th day of March 2016.

F. TUIYOTT

J U D G E

In the presence of:-

Orwasa – C/Assistant

Petitioner present in person

Objectors present in person.