



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT KISUMU**  
**SUCCESSION CAUSE NO. 261 OF 2010**  
**IN THE MATTER OF THE ESTATE OF**  
**NDUGU WAKOYO (DECEASED)**  
**BETWEEN**  
**ATIANG' SIALA.....OBJECTOR**  
**AND**  
**TERESIA ADHIAMBO SHIKUKU.....PETITIONER/RESPONDENT**

**RULING**

1. Teresia Adhiambo Shikuku (“Teresia”) moved this court to seek grant of letters of administration for the estate of the deceased NDUGU WAKOYO who is said to have died on 8<sup>th</sup> July 1975. She stated that she was the step daughter-in-law to the deceased. His only known asset was a land parcel KISUMU/CHIGA/231 (“Plot 231”).
2. After the petition was advertised Atiang’ Sala, the objector, lodged the objection opposing the issuing of the grant of letters of administration intestate to Teresia. In the objection dated 10<sup>th</sup> September 2010 he raised the following grounds:
  - (a) That the objector had an interest in the estate of Ndugu Wakoyo.
  - (b) That the objector is a bona-fide purchaser of the whole of Plot 231. which is part of the estate.
  - (c) That the objector will suffer prejudice as he has occupied Plot 231 since 1992 which is a period of over 18 years.
3. I heard the testimony of both the objector and petitioner. What emerged is that the objector had sued the Teresia and her children, Odhiambo Shikuku and Otieno Shikuku in **Kisumu HCCC No. 162 of 2007**. In that case he sought to be declared the owner of Plot 231 by adverse possession and that Teresia and her family were trustees of Tobias Shikuku and that they be compelled to transfer to him the plot which he had purchased. The case was heard by Mwera J., and in a judgment delivered on 19<sup>th</sup> July 2009 he dismissed the claim on ground that the sale was invalid as the vendor had no capacity to sell the plot. He further held that the time for claiming adverse possession had not lapsed.
4. At the stage of the objection, the issue before the court is who should administer the estate of the deceased. **Section 66** of the *Law of Succession Act (Chapter 160 of the Laws of Kenya)* gives direction

on the matter. It states as follows;

66. *When a deceased has died intestate, the court shall save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice, to that discretion accept as a general guide the following order of preference:*

*(a) surviving spouse or spouses, with or without association of other beneficiaries,*

*(b) other beneficiaries entitled on intestacy, with priority according to their respective beneficial interests as provided by part V:*

*(c) the Public Trustee; and*

*(d) creditors:*

*Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.*

5. The objector does not fall within the class of persons set out in (a), (b) or (c) while the petitioner is among the persons set out in (b) and is entitled to the grant as there is no objection from any other family members or persons in priority to her. The objector's claim is to the property and the issue has been litigated upon in another forum. He is clearly not a person entitled to administer the estate.

6. I reject the objection. It is dismissed with costs. The grant of letters of administration intestate shall now issue to **Teresia Adhiambo Shikuku**.

**DATED and DELIVERED at KISUMU this 26<sup>th</sup> day of October, 2016**

**D. S. MAJANJA**

**JUDGE**

Mr Omondi T. instructed by Mwamu and Company Advocates for the objector.

Moses J. A. Orengo, Advocate instructed by the petitioner/respondent.