



REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

SUCCESSION CAUSE NO. 21 OF 2015

(FORMELY KISII HIGH COURT SUCCESSION CAUSE NO. 124 OF 2011)

IN THE MATTER OF THE ESTATE OF

PAMELA ATIENO NYAKONGO (DECEASED)

AND

IN THE MATTER OF APPLICATION FOR CONFIRMATION OF GRANT

BETWEEN

ERICK JUMA NYAKONGO APPLICANT

AND

WILLIAM OKOTH ABATHA RESPONDENT

RULING

1. The summons for confirmation before the court is dated 4th October 2012. The applicant seeks an order the grant of letters of administration intestate issued to William Okoth Abatha (“William”) and Erick Juma Nyakango (“Erick”) on 8th July 2011 be confirmed in the name of Erick Juma Nyakango as administrator.
2. The proceedings in this matter were commenced by a petition filed by William in *Homa Bay SRM Succession Cause No. 48 of 2010* for the estate of the deceased who is said to have died on 13th March 2009. According to **Form P & A 5**, William said he was the step- son of the deceased and he named Erick, who was then a minor, as the son of the deceased. The deceased properties were identified as various policy premiums payable by Pioneer Insurance Company Limited. A grant of representation was issued to the respondent on 25th July 2011 but the same was subsequently revoked and reissued to both parties in *Kisii Succession Cause No. 124 of 2011*.
3. The applicant states that he is now an adult and is entitled to administer the estate alone as he is the only son of the deceased. In the affidavit he states that the confirmed grant will entitle him to inherit family land.
4. The respondent has filed an affidavit of protest in which he complains that the application was filed without his knowledge and consent yet he is a co-administrator. He further states that the insurance policies that are the property of the deceased are the subject of *Homa Bay Chief*

Magistrates Court Case No. 79 of 2010 (William Okoth Abatha v Pioneer Assurance Company Ltd) which was dismissed and is pending appeal being **Homa Bay High Court Civil Appeal No. 51 of 2015**. He contends that the application is intended to undermine and defeat the subject claim.

5. According to the schedule of assets of the deceased set out in **Form P & A5**, the deceased's assets disclosed are, "*Various insurance policy premiums payable to Pioneer Insurance Company Limited No. 280001670, 280002406, 280002617, 280002624 and 280003773.*" The affidavit in support of the summons for confirmation identifies the share of property as, "*Erick Nyakongo to inherit the family land.*"
6. The applicant does not lay claim to the policy premiums which are disclosed in the schedule of assets supplied by the petitioner. Furthermore, the particulars of the "*family land*" are vague and the said family land is not included in the inventory of assets required under **section 51(2)(h)** of the **Law of Succession Act (Chapter 160 of the Laws of Kenya)** and **rule 7(1)** of the **Probate and Administration Rules**. Given the status of the deceased's property, I am unable to confirm the grant in favour of the applicant.
7. That is not the end of the matter. William filed the petition on the ground that Erick was a minor. Erick is now an adult and is entitled to administer the estate of his mother on his own. Furthermore, contrary to what William stated in the petition, he is neither a son nor step-son of the deceased. He is not a person ordinarily entitled to preference in administering the estate of the deceased under **section 66** of the **Law of Succession Act**.
8. In order to bring this matter to a conclusion, I direct the **WILLIAM OKOTH ABATHA** to show cause why the grant issued to him jointly with the Erick Juma Nyakongo should not be revoked.

DATED and DELIVERED at HOMA BAY this 25th day of May 2015.

D.S. MAJANJA

JUDGE

Mr Okoth instructed by G. S. Okoth & Company Advocates for the applicant.

Respondent in person.