



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**SUCCESSION CAUSE 336 OF 2010**

**IN THE MATTER OF THE ESTATE OF: SAMSON ODHIAMBO PANDE– DECEASED**

**VERSUS**

**IN THE MATTER OF AN APPLCIAITON BY: ELIZABETH OWUOR ONYANGO  
- APPLICANT**

**AND**

**IN THE MATTER OF AN OBJECTION BY: ADONIJA OBIAYO OBARA**

**J U D G E M E N T**

The petitioner **ELIZABETH OWUOR ODHIAMBO** petitioned this court for grant of letters of administration on the 31st of May 2010 as the widow of **SAMSON ODHIAMBO PANDE**. A grant of letters of administration intestate was issued to her on the 20th of September, 2010.

On his part the objector **ADONIJA OBIAYO OBARA** filed summons for revocation of the said grant on the 30th of November, 2011 on the grounds that the same was obtained fraudulently by making false statement and concealing of material facts. The objector also sought to have the matter referred to the Land Disputes Tribunal.

The grounds on the face of the application are in summary that: the deceased did not own land (not clear which land). Secondly the petitioner was not the wife of the deceased and that there is pending **Maseno SRMCC No.45 of 2007**.

The petitioner objected to the summons by filing a replying affidavit dated 7th May, 2011 and which may be summarised as follows; that **OBADO OLWENY** referred to in the objection was not her husband's relative, that she was married to the deceased under Luo customary Law and together they sired 5 children, 4 of whom are deceased, and she has one daughter alive, that the objector is a stranger, that case **No.45 of 2007 RMCCC Maseno** was in relation to property No. **KISUMU/RATTA/1988** which does not form part of the estate and that any claim against the deceased's estate may be brought only in a civil suit.

This case proceeded by way of viva voce evidence. The objector had two witnesses and the petitioner was a sole witness.

**PW1 ADONIJA OBAYO OBARA** – the objector stated in evidence that the deceased was his neighbour

and their homes are merely 200 meters apart. It was also his evidence that the petitioner was not married to the deceased as the petitioner had earlier been married elsewhere but was inherited by the deceased and customarily she could not inherit his estate as a wife. He further stated that his interest was to get back property 1566 which the deceased had grabbed from him during adjudication. He also stated that he had raised an objection in Land Dispute Tribunal Case No.19/05 but the land was given to the deceased family. He filed another case, No.45 of 2007 and the petitioner won. He confirmed that he had no claim as a beneficiary.

**PW2 GILBERT OKUMU OWINO** relied on his affidavit of 7th July, 2011 which may be summarised as follows: That the petitioner was married to **Aggrey Odhiambo Osoo** and later inherited by the deceased **Samson Odhiambo Pande**. In cross-examination he stated that there is a dispute relating to ownership of 1566 which in his view belonged to PW1.

The petitioner **DW2 ELIZABETH OWUOR ODHIAMBO** in her evidence stated that she was married to the deceased in 1956 under Luo Customary Law and dowry paid for. That they sired 5 children. 4 of whom are dead save one Fibi Achieng. She denied having been married to one **Aggrey Odhiambo Osoo** as alleged. It was her evidence also that her late husband had two sisters who were both married in Asembo and who have since died, that he had two brothers both who are now deceased and that wife to one brother is alive and the 2nd brother has children who all supported her when she petitioned for the grant.

It is to be noted that the objector's case was that the petitioner obtained the grant fraudulently and by concealing material facts to the case.

What is clear from the evidence adduced by all the parties herein is that the objector was not related to the deceased in any way. They were simply neighbours and remain so. The parties before court including the deceased have had issues in relation to parcel No. **KISUMU/RATA/1566**. Which forms part of the estate.

It is my view that since the objector does not claim any interest as a beneficiary, survivor and/or Dependant of the deceased his objection in the cause is misplaced. The issue as to whether the petitioner was a wife or not will not assist the objector indeed his assertions against the petitioner were not proved at all. If he has any claim at all the same should be filed in a civil suit which he has not yet done, as such a claim cannot form an issue for determination in succession cause.

For the reasons above the objection is dismissed with costs.

The respondent is at liberty to file for confirmation of the grant.

**Dated and delivered this 27th July, 2012**

**ALI-ARONI**  
**JUDGE**

**In the presence of:**

.....**counsel for plaintiff**

.....**counsel for defendants**