



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**SUCCESSION CAUSE NO. 35 OF 1996**

**IN THE MATTER OF THE ESTATE OF FEMINA KASAYA OMONDI ..... DECEASED**

**PATRICK UHURU OMONDI.....PETITIONER**

**V E R S U S**

**QUEEN IMINZA.....OBJECTOR**

**R U L I N G**

Femina Kasaya Omondi, the deceased to whose estate these proceedings relate died on 21<sup>st</sup> August 1991. On 23<sup>rd</sup> January 1996, Patrick Uhuru Omondi (the petitioner) petitioned this court to be granted letters of administration intestate to administer the estate of the deceased. In his petition, the petitioner listed himself as the only beneficiary of the deceased. The only asset stated to belong to the estate of the deceased was a parcel of land registered as L.R. No. Kakamega/Lumakanda/842 (hereinafter referred to as the suit parcel of land). This parcel of land measures 4.6 hectares or 11.3 acres.

When Queen Iminza (the objector) became aware that the petitioner had petitioned this court to be granted letters of administration intestate, she filed objection challenging the assertion by the petitioner that he was the only beneficiary of the estate of the deceased. She accused the petitioner of failing to disclose the fact that she was a widow to Omondi Luvuya (deceased) and co-wife of Femina Kasaya Omondi, and therefore entitled to be declared as a beneficiary of the estate of the deceased together with her children, namely, Joshua Ojundo Omondi, Wycliffe Daima Omondi, Julia Libese Omondi, Edward Omondi and Godwin Omondi. She further stated that the petitioner failed to disclose to the court the fact that she was residing on the suit parcel of land. In response to the objection, the petitioner, while conceding that the objector was a widow to Omondi Luvuya (deceased), he denied that the parcel of land that is the subject of the succession proceedings belonged to the said Omondi Luvuya (deceased). He reiterated that the parcel of land in question belonged to Femina Kasaya Omondi (deceased) who was his mother. He was emphatic that, the objector, as a co-wife of Femina Kasaya Omondi (deceased), had no right over the suit parcel of land. On her part, it is the objector's case that Femina Kasaya Omondi

(deceased), during her lifetime, had herself fraudulently registered as the sole owner of the suit parcel of land even after the court had ruled that the particular parcel of land be inherited jointly by herself and Femina Kasaya Omondi (deceased) as the widows of Omondi Luvuya (deceased).

During the hearing of the objection, this court heard oral evidence adduced by the petitioner and the objector. After carefully evaluating the said evidence, it was clear that Femina Kasaya Omondi (deceased) had herself registered solely as the proprietor of the suit parcel of land despite the fact that the District Magistrate at Butali in Land Succession Case No.26 of 1980 had ruled that Femina Kasaya Omondi (deceased) and Queen Iminza subdivide the suit parcel of land so that both of them could each inherit half a share. The basis of the petitioner's case was that the suit parcel of land belonged to Femina Kasaya Omondi (deceased). From the evidence adduced, it was clear that the suit parcel of land initially belonged to Omondi Luvuya (deceased) the husband of both Femina Kasaya Omondi and Queen Iminza. This was before Femina Kasaya Omondi had herself registered as the sole owner of the suit parcel of land despite the fact that there was a court order that directed that the suit parcel of land be subdivided equally between Femina Kasaya Omondi and Queen Iminza as the widows of Omondi Luvuya (deceased).

In the premises therefore, it is clear that the objector has a case when she states that she is entitled, firstly, to be a joint administrator of the estate of the deceased, and secondly, to inherit a portion of the suit property that comprised the sole estate of the deceased. This court therefore appoints Patrick Uhuru Omondi and Queen Iminza to be the administrators of the estate of the deceased. The grant of letters of administration issued to the two is hereby confirmed on the following terms:

1. Queen Iminza (together with her children) shall inherit the portion of the suit parcel of land measuring 5 acres.
2. Patrick Uhuru Omondi (together with his siblings) shall inherit the remainder of the said parcel of land.
3. The petitioner shall pay the costs of the objection proceedings to the objector.

**DATED AT KAKAMEGA THIS 27<sup>TH</sup> SEPTEMBER 2011**

**L. KIMARU**  
**J U D G E**