# REPUBLIC OF KENYA
# IN THE HIGH COURT OF KENYA
# AT BUNGOMA

## SUCCESSION CAUSE 65 OF 1998

**IN THE MATTER OF THE ESTATE OF THE LATE:**
**SAMUEL KHISA BARASA :::::::::::::: DECEASED**

**IN THE MATTER OF AN APPLICATION:**
**WILKSTAR NAKHUMICHA KITUI :::::::::::::::: APPLICANT**
**AND**
**IN THE MATTER OF:**
**MIRIAM NIGHT BARASA :::::::: :::PETITIONER/RESPONDENT**

**RULING**

The Applicant Wilkistar Nakhumicha Kitui in her application dated 23/7/2009 seeks to be enjoined as a co-petitioner in this cause and for an order prohibiting the sale of land No.East Bukusu/North Sang'alo/1380 and plot number 233 B Bukembe Market until the confirmation of grant.

The facts in this application are that the Petitioner Miriam Night Barasa the widow of the deceased Samuel Khisa Barasa was appointed the administrator on 09/07/2009 after the grant which was fraudulently obtained and confirmed by the son of the deceased Mathew Andrew Nyongesa was revoked. The grant is awaiting confirmation. The Applicant herein claims to be the widow and first wife of the deceased and in that capacity seeks to be enjoined as a co-petitioner. The Applicant says she is entitled to a share in the estate of the deceased and wants to protect her interests.

The application was opposed by the Respondent/Petitioner. In her replying affidavit, the Respondent depones that the Applicant was married to the deceased and was divorced in 1976. Since then, the respondent has married four other men one at a time who are named in the replying affidavit. Her current husband is one Maxwel Wafula working with Nzoia Sugar Co. Ltd. The Applicant sought leave to file a further affidavit in response to the allegations in the replying affidavit. However, no response was filed. Mr. Kakoi for the Applicant submitted that the Applicant is not a dependant of the deceased under section 29 of the Succession Act. It is admitted that the Respondent cohabited with the deceased and got a child. It is only that child who could be considered as a beneficiary.

From the evidence of both parties, it is not disputed that the Applicant sired a child with the deceased who is a potential beneficiary in the estate of the deceased. The failure to reply to the facts deponed in the replying affidavit leads to an inference that those facts are true. It would be ridiculous for the applicant to assume that she can be appointed an administrator of the estate of the deceased when she is married to another man being her fourth husband in sequence after her relationship with the deceased ended. Mr. Situma raised the issue that dowry was not refunded by the deceased in respect of the applicant. This was a statement from the bar since it is not contained in the supporting affidavit. The Respondent accepts the son of the respondent as a heir to the deceased's estate. It is her contention that the Applicant is a stranger to the estate of the deceased.

I find that the Applicant has not established any legal interest in the estate of the deceased in order to be joined as a co-petitioner. It also follows that the second order sought in the application cannot be granted for lack of merit. I therefore dismiss the application with costs.

**F. N. MUCHEMI**
**JUDGE**

Ruling dated and delivered on the 7th day of October 2010 in the presence of Mr Situma for Applicant and Mr Kakoi for the Respondent.

**F. N. MUCHEMI**
**JUDGE**