

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CASE NO. 355 OF 2009

**(IN THE MATTERS OF THE ESTATE OF THE LATE ROBERT ENSARE OSIEMO
(DECEASED)**

MILLICENT WAMAITHA.....APPLICANT/OBJECTOR

VERSUS

SUSAN SARANGE OSIEMO.....1ST RESPONDENT/PETITIONER

JOHN GICHANA.....2ND RESPONDENT/PETITIONER

RULING

The petitioners filed this cause for a grant of representation for the estate of the deceased, Robert Onsare Osiemo, who died intestate and was survived by his widow, Susan Sarange Osiemo, the 1st petitioner, John Gichana Osiemo, the 2nd petitioner and two minors, D.N.O and E.M.O.

The applicant/objector has raised objection to the issuance of the grant and has filed as required by the Law of Succession Act, Answer to Petition and Petition by way of cross-application claiming that the deceased was also survived by two other minors, W.O and S.O who he sired with the objector out of wedlock. She has objected to the grant being issued on the grounds that despite the fact that the two minors are biological children of the deceased, they have not been included in the cause as beneficiaries of the estate. It is also alleged that some of the assets of the deceased have not been disclosed. For instance, accounts with Family Bank and National Bank of Kenya Limited. It is further stated that the alleged liability to the Co-operative Bank of Kenya Limited was fully paid.

In reply to these averments, the 1st petitioner has deposed that the deceased left only the matrimonial home, BAHATI/BAHATI/BLOCK 1/407, which does not generate income; that the three accounts with National Bank of Kenya and Family Bank Limited are in debit status.

The applicant/objector is categorical that she is not interested in the estate for her sake but for the sake of her two children. Although no birth certificates in respect of the two minors are exhibited in this cross-application it is clear from the 1st petitioner's replying affidavit and her counsel's submissions that the fact that the two are biological children of the deceased is not denied.

That being so, in terms of **section 29** of the **Law of Succession Act**, the two minors were dependants of the deceased. The applicant/objector being their mother but not laying any claim to the estate for herself qualifies to be a co-administratrix with the two petitioners to take care of the interest of the two minors. It is so found.

Regarding the assets, the applicant/objector has not demonstrated that other than BAHATI/BAHATI/BK 1/407 there are other assets. The 1st petitioner has on the other hand shown that the banks accounts are in debit and there are liabilities. I make no orders as to costs.

Orders accordingly.

Dated, Delivered and Signed at Nakuru this 19th day of November, 2010.

W. OUKO

JUDGE