

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII

Succession Cause 281 of 2003

IN THE MATTER OF THE ESTATE OF JOHN OTIENO MBERO (DECEASED)

AND

BOAZ OLUOCH OTIENO..... CITOR

AND

ELLY OMOLLO ASEWE OBJECTOR

RULING

On 13th April 2004, the applicant filed an application by way of a Notice of Motion brought under **Section 3A** of the **Civil Procedure Act**. He sought the following orders.

“1. That the applicant be granted orders to acquire title

deed on land parcel No. West

Kasipul/Kasimba/210.

2. That the applicant be allowed to file a full grant/letters of administration.

3. That the application be provided for.” (sic)

In his affidavit in support of the application the applicant stated that he filed a citation against the respondent who had since refused to enter appearance of show cause why the applicant could not proceed to obtain from the court necessary orders. He added that the deceased had fraudulently acquired a title deed from the applicant’s brothers and the applicant now want to pursue the matter. The property in dispute is the parcel of land known as WEST KASIPUL/KASIMBA/210.

Although the respondent appointed M/s Kimanga & Company Advocates on 12th July 2004, he did not give any instructions to the said advocate. As a result when the application herein came up for hearing on 13th of March 2009 the said advocates informed the court that he had filed a notice of withdrawal due to lack of instructions from their client.

From the foregoing I believe the respondent is not keen on applying for letters of administration in respect of the estate of **John Otieno Mbero, deceased**. In the circumstances the applicant is allowed to apply for grant of letters of administration intestate of the estate of the deceased. The applicant shall have the costs of this application.

DATED, SIGNED AND DELIVERED AT KISII THIS 28TH DAY OF JULY, 2009.

D. MUSINGA

JUDGE.