

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Miscellaneous Succession Cause 231 of 2009

IN THE MATTER OF SAMSON OTIENO TUMBO (DECEASED)

RULING

This is an application brought under Section 54 of law of Succession Act and pursuant to the Fifth Schedule Rule 14 in which the Petitioner seeks a grant of representation to the deceased's estate, to protect wastage or sale of the property of the deceased by illegal persons. In support of the application Samwel Misiku Otieno has sworn an affidavit in which he avers that the deceased Samson Otieno Tumbo died on 19th March, 2006 at Masamaro – Miruka intestate; that at the time of his death, the deceased was domiciled in Kenya and his known place of residence was Masamaro- Miruka; and that he seeks the grant of representation to preserve the property of the deceased.

The Petitioner applies for a grant of letters of administration pendete lite of the estate of the deceased Samson Otieno Tumbo to enable him to preserve the estate of the deceased but he does not disclose whether or not he has obtained the consent of the other beneficiaries if any nor does he identify the property of the deceased's estate which he intends to protect. From the affidavit evidence it is evident that the deceased was domiciled and died in Nyamira District within Nyanza Province and he does not state why he had come all the way to file the Petition in Eldoret within the Rift Valley Province.

Further the facts as gathered from the affidavit evidence it is clear that the deceased died on 19-3-2006 but there is no explanation as to why no petition has ever been filed in respect of the estate of the deceased.

Having considered the Applicant's petition in light of the affidavit evidence on record and the submissions by Counsel I find no merit in this application. It ought to have been filed at the High Court in Kisii.

Accordingly, Applicant's petition is dismissed with no order as to costs.

DELIVERED AND DATED AT ELDORET THIS 22ND DAY OF SEPTEMBER, 2009.

J. L. A. OSIEMO

JUDGE

In the presence of:-