



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KISUMU**

**Succession Cause 213 of 2006**

**IN THE MATTER OF CHARLES NYAMITA- DECEASED**

**-AND-**

**IN THE MATTER OF THE PETITION BY DORINA OMOLLO OLANDO**

**AND**

**IN THE MATTER OF AN APPLICATION BY: GORDON NYANGO NYAMITA...APPLICANT**

**RULING**

Coram:

**J. W. Mwera J.**

Mwamu for the applicant/objector

Defendant in person

Raymond Court Clerk/Inter.

The applicant herein is one Gordon Onyango Nyamita. His desire is that a grant in this cause should not issue to one Dorina Omollo Olando who filed this petition on 25.4.2006. His reasons are that the said Dorina is not related to Charles Nyamita who died on 2.12.98. That the objector's family did not consent to such move by Dorina and so this court should so find.

The objection was set for hearing on 14.5.2008. Mr. Mwamu drew the court's attention to an affidavit of service sworn on the same day to the effect that Dorina was notified of the hearing. She did not show up and the court proceeded to hear Gordon (PW1) ex parte.

He told the court that he was a son of the deceased Charles Nyamita (Exh. P1) and his only brother was called George Onyango. They had two married sisters. Dorina was only a neighbour in the village who had no right or cause to petition for a grant of letter over the estate herein. She did not get consent from the Nyamita family either, before petitioning. His brother was mentioned in P & A 5 form (excluding himself) and the rest of those named there were only villagers – not relatives. Of course the parcel of land enumerated there no. KSU/KOGUTA EAST/351 (Exh. P2) was in the name of the deceased. Thus the orders sought ought to be granted – nullifying this petition.

Mr. Mwamu submitted that the orders be granted.

In this court's opinion and as per the evidence, the objector (Gordon) is the first son of the deceased Charles Nyamita. He is the entitled relative/heir who could and should petition to administer the estate herein. The present petitioner Dorina did not appear to argue why she moved to petition here. Gordon and/or his brother George did not consent to Dorina's move and she does not seem to have had a cause for it.

Gordon testified that Henry Abuto was never the deceased father as P & A 5 filled by Dorina. His father was one William Opuk. She herself was not deceased's mother either (See P & A -80).

In sum, the prayers are granted. The proceedings on this petition are found to be a nullity. They are set aside giving way to objector to take whichever course he considers proper in respect of his deceased father's estate. Costs to the objector.

Ruling on 4.6.2008.

**J. W. MWERA**

**JUDGE**