

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT BUSIA

Prob & Admin Cause 95 OF 2005

MARY AKISA ORICHO :::::::::::::::::::: APPLICANT

AND

SIMON ORICHO OMEREKEKE :::::::::::::::::::: DECEASED

RULING

Mary Akisa, the applicant, is the daughter of Simon Oricho Omekeke who died on 20th December 1984.

According to Mary Akisa's evidence, on oath, the deceased was survived by herself (Mary Akisa) and her sister Domtilla Amokolo. Domtilla died in 1984 and was survived by five (5) children, namely James Ouma, Damol Erite, Patrick Odema and James Ethamalina.

Mary Akisa has two children. She included the name of one of them: James Ekamiran but excluded all the children of Domtilla Amokolol.

Section 66 of the Law of Succession Act lists in a hierachical order the persons to whom grant of representation in intestacy can be made to. The surviving spouse has priority in applying for and being granted letters of administration. Ranking second in priority are the surviving children of the deceased Simon Oricho Omerekeke who in this case are Mary Akisa, the applicant and Domtillah Amokolol.

Domtilla and her children have not been included as beneficiaries in these proceedings. Accordingly, I find as a matter of law that the application is riddled with material non-disclosure. In the interest of justice, I revoke the grant issued on 31st January 2006 and grant leave for filing of a fresh application in the joint names of Mary Akisa and Domtila Amokolol.

DATED and DELIVERED at Busia this 27th day of November, 2006.

N.R.O. OMBIJA

JUDGE

Delivered in the presence of Mary Akisa Oricho the applicant.