

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUSIA

Prob & Admin 40 of 2001

PASCAL ODUNDO KHASEKE

MOSES OUMA OGANGIRA.....APPLICANTS

VS

OKUMU OGANGIRA WERE.....DECEASED

RULING

There are two applicants in this case: Moses Ouma Ogangira (PW1) and Pascal Odundo Khaseke (PW2): Father and son respectively.

The evidence on record reveals that the deceased had three children, John Okumu, David Opondo and Oduor Okumu. John Okumu, on the evidence, died in Mombasa and was buried in a parcel of land which forms part of the estate. The remaining sons who are still alive, namely, David Opondo and Oduor Okumu are not parties to that application.

Provision relating to intestate are as contained in part V, Sections 32 to 42 of the Law of Succession Act. The intestacy rules only benefit people who also have a direct blood link with the intestate, that is apart from the spouses.

Section 66 of the Law of Succession Act lists in a hierarchical 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 [*see in the matter of the Estate of Murathe Mwaria (deceased) Nairobi HCCC NO.875/2005*] [Kooome J].

Ranking second in priority are the surviving children of the deceased, which in this case, are David Opondo and Oduor Okumu.

There is no evidence that the two surviving children have any objection to the two applicants taking out letters of administration.

It would appear to me that this application suffers from material non-disclosure. The justice of the case, therefore, demands that the grant issued herein on 6th June 2006 be revoked, which I hereby do. The applicants are complete strangers to the estate of Okumu Ogangira Were.

I order the sons of the deceased, David Opondo and Oduor Okumu, to move with haste and make necessary application for grant of letters of administration.

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

N.R.O. OMBIJA

JUDGE