

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

SUCCESSION CAUSE NO.2610 OF 2000.

IN THE MATTER OF THE ESTATE OF BEATRICE AMALEMBA

RULING

The Applicant Lennox Amalemba is the applicant in this summons brought under section 51 of the law of succession act and Rule 7 and 73 of the P&A Rules. He is seeking for orders that: -

1) The Grant of Letters of Administration to the deceased estate that was made to Benedict Ogutu and Margaret Awino Otsieno that were revoked by the court by the Ruling of 3rd October 2002 be issued to him. The application is supported by his affidavit sworn on 20th December, 2002. The applicant successfully applied for the revocation of the grant issued to Benedict Ogutu and Margaret Awino Otsieno. By the ruling of this court, the grant was revoked as having been fraudulently obtained by concealment from the court of something material to the case.

The court directed that the applicant herein who is the father of the deceased and the petitioners who were deceased mother in law and brother in law to should agree whom the grant of letters should be re-issued to. The parties have been unable to agree and hence the application before the court. The Applicant is the father of the deceased. As at the time of her death, the deceased husband had pre-deceased her and she was not survived by any child. The applicant looked after her deceased daughter, paid the hospital bills and buried her in his home. The applicant was not informed when the grant that was revoked was issued to the respondent's herein hence the court's ruling that the grant was obtained fraudulently without material disclosure.

This court having made decision, my duty is in deciding the application before me is to determine who between the Applicant and the Respondent has the priority under the law to be issued with the grant of letters of Administration of the deceased and in this regard, I turn to the provisions of section 39 (1) of the law of succession which provides and I quote

“Where an intestate has left no surviving spouse or children, the net intestate estate shall devolve upon the kindred of the intestate in the following order of priority - a) Father; or if dead b) Mother; or if dead c) Brothers and sisters, any or children of deceased brothers and sisters in equal shares; or if none. d) Half brothers and half sisters and any child or children of the deceased half brothers and half sisters in equal shares; or if none. e) The relatives who are in the nearest degree of consanguinity up to and including the sixth degree in equal shares.

Considering the above provisions of the law, I find that the applicant, Lennox Allan Amalemba should be issued with the grant of letters of Administration of the deceased estate. The applicant should also be entitled to the costs of this application. It is so ordered.

Ruling read and signed on 16/1/2004.

M. KOOME J.

16/1/2004

