

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA
SUCCESSION CAUSE NO. 74 OF 2001

IN THE MATTER OF THE ESTATE OF
SABASTIAN NELAKALA OTSIENO DECEASED

AND

JENEFEFA MALOBA NANGITI
BIBIANA RESPA OMUNYIN PETITIONERS

VS

PANCRAS MUYA OCHIORI
BONVENTURE TAABU ODUORI OBJECTORS

R U L I N G

Jenefefa Maloba Nangiti and Bibiano Respa Omunyin applied and successfully obtained grant of letters of administration intestate in respect of the estate Sabastian Ndakala Otsieno deceased. It would appear the objectors, Pacras Muya Ochiori and Bonventure Taabu Oduori learned of the succession proceedings after the grant was made to the petitioners. The objectors promptly filed a notice of objection pursuant to rule 17 (1) of the probate and administration rules. The objectors listed 7 grounds in their notice of 30th June 2003 resisting the grant of representations given to the petitioners.

This court gave directions in which the parties were allowed to proceed for hearing by giving oral evidence. Directions were taken on the presumption that the provisions of Section 63 (2) of the law of succession Act had been complied with. I have perused the court record and it is clear that the objectors were not given notice to file an answer to the petition and a cross-petition as required under the aforementioned provisions of the law.

Therefore the objection was prematurely heard. Consequently the proceedings taken on 31st May 2004 are set aside and the Deputy Registrar is directed to issue to the objectors notices pursuant to the provisions of section 68 (2) of the law of Succession Act and Rule 17 (5) of the Probate and Administration rules.

Costs shall be in the cause.

DATED AND DELIVERED THIS 9th DAY OF July 2004

J.K. SERGON

JUDGE

