



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT ELDORET  
PROBATE AND ADMINISTRATION CAUSE NO.148 OF 2004**

**IN THE MATTER OF THE ESTATE OF  
SAMUEL CHERUIYOT TOO (DECEASED)**

**AND**

**WINIFRED GESARE MOGAKA .....PETITIONER**

**RULING**

This is a Chamber Summons brought under section 67(1) of the Law of Succession Act and Rules 36 and 49 of the Probate and Administration Rules. It is dated 12th May 2004 and was brought under certificate of urgency. It seeks for orders that letters of administration *ad colligenda bono* to the estate of the late Samuel Cheruiyot Too be granted to Winifred Gesare Mogaka.

I have considered the documents filed in the application and the submissions of counsel for the applicant. The property of the deceased in issue are shares in a cooperative society and on that score I do not understand how it becomes urgent to withdraw that money, as there is no allegation that the money will be lost.

Secondly, the deceased is said to have left young children one born on 24th August 1994 and the other born on 1st October 1998 and the applicant to the letters of administration is only one person, contrary to the law. Thirdly, there are photocopies of affidavits, not originals, indicating that the applicant was married to the deceased, under Nandi customary law, while the applicant who was the woman, is a Kisii. I would imagine that the customary marriage would therefore be under Kisii customary law.

I am not persuaded that there are merits in the applicant. I therefore dismiss the application. Grant of letters of administration to follow the normal process as required by law.

**Dated and Delivered at Eldoret this 21ST Day of June 2004**

**George Dulu**

**Judge**

Ruling read in open court in the presence of Ms. Konuche for the applicant.

**George Dulu**

**Judge**

*(I certify this a true copy of the original)*

**DEPUTY REGISTRAR**