



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT HOMA BAY**

**PROBATE & ADMINISTRATION NO. 10 OF 2017**

**IN THE MATTER OF THE ESTATE OF:**

**CHARLES ODIEMBO ATITO (DECEASED)**

**BETWEEN**

**BRIGITER ANDURU OLERO.....OBJECTOR/APPLICANT**

**AND**

**WASHINGTON OMUGA PESA.....PETITIONER/RESPONDENT**

**RULING**

1. Brigiter Anduru Olero, the objector/applicant herein moved the court by way of summons for revocation or annulment of grant dated 28<sup>th</sup> February, 2017 under section 76 of the Law of Succession Act and Rules 16(3), 44, 49, 59 and 63 of Probate and Administration Rules. She is seeking the following orders:

- a) That the grant of letters of administration issued to Washington Omuga Pesa on 9<sup>th</sup> October, 2013 be revoked and/or annulled.
- b) That this honourable court be pleased to order that the objector do take a separate cause in the administration of the estate of Charles Odiembo Atito.
- c) That costs be in the cause.

2. The application is premised on the following grounds:

- a) That the deceased was not survived by a spouse or a child.
- b) That the deceased was survived by issues of his stepbrothers who include the objector who is his sister in-law and the respondent.
- c) That the petitioner/respondent concealed from the court some of the beneficiaries.

3. The application was opposed on the following grounds that the objector is a sister in-law of the deceased herein and therefore not entitled to inherit.

4. Both parties agree as to the relationship of petitioner and that of the objector to the deceased. They also agree that the deceased was not survived by any spouse or child. His estate will therefore be governed by the provisions of section 39 of the Law of Succession Act. It provides as follows:

**(1) 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, and any child 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 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.**

**(2) Failing survival by any of the persons mentioned in paragraphs (a) to (e) of subsection (1), the net intestate estate shall devolve upon the State, and be paid into the Consolidated Fund.**

5. Whereas the petitioner is recognized by the law, the objector does not fall under any category that can inherit from the deceased. Her summons for revocation is therefore dismissed with costs.

**DELIVERED AND SIGNED AT HOMA BAY THIS 13TH DAY OF JULY, 2021**

**KIARIE WAWERU KIARIE**

**JUDGE**