



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

PROBATE & ADMINISTRATION NO. 33 OF 2011

IN THE ESTATE OF: MUSA NYANDUSI KENYANSA.....DECEASED

BETWEEN

CHRISTOPHER KENYANSA.....PETITIONER

AND

DORCAS BISIBORI KENYANSA.....OBJECTOR

RULING

1. Dorcas Bisibori Kenyansa, the objector herein filed an objection to the making of a grant dated 3rd March 2011 under section 68 of the Law of Succession Act, Cap. 160 and Rule and 17(1) of the Probate and Administration Rules. It is premised on the following grounds:

- a) That the petitioner concealed material facts in the petition.
- b) That the objector ranks first in priority as a widow.
- c) That the petitioner did not include all the deceased's property in the petition.

2. The objection was not opposed.

3. I have perused the affidavit of the objector and the record. The following facts have emerged:

- a. That the petitioner while applying for the grant stated that the deceased died without a wife and a child. This was however not true.
- b. That at the time of the death of the deceased herein, he was survived by a wife and a child.

4. The law of Succession Act has provided for a brother of a deceased only in instances where the deceased is not survived by a spouse or a child. Section 39 of the Law of succession 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.

The petitioner not only lied to the court but had no right to petition for the grant.

5, I therefore find that the application is merited. The objection is sustained. The objector herein is appointed the administrator of the estate of the deceased.

6. The costs of the objection be borne by the petitioner.

DELIVERED and SIGNED at BUSIA this 12th day of June, 2019

KIARIE WAWERU KIARIE

JUDGE