**IN THE HIGH COURT AT HOMA BAY**

**SUCCESSION CAUSE NO. 57 OF 2013**

**IN THE MATTER OF THE**

**ESTATE OF JOSEPH OTINA TAMBO (DECEASED)**

**BETWEEN**

**CHARLES ODHIAMBO OTINA ..... PETITIONER**

**AND**

**PENINA APIYO OBINJU ……..…. RESPONDENT**

**RULING**

1. Joseph Otina Tambo died on 12th August 1985. His son Silfano Omune Otina filed a petition dated 23rd July 2013 seeking grant of letters of administration intestate. According to Form P & A 5, the deceased left behind two surviving children; Charles Odhiambo Otina and the applicant. A buyer, one George Odhiambo Odhiambo was listed as a beneficiary. The deceased left behind one property; GEM/KANYAMWA/1408.

2. Penina Apiyo Obinju lodged an objection dated 23rd September 2013. She claimed that the applicant filed the petition without consulting her and other members of the family and that they will be disinherited if the land is distributed. She claimed that as daughter-in-law of the deceased she is entitled to be considered as a beneficiary. She also filed a petition by way of cross application for inclusion as beneficiary as the first wife of Charles Otina and answer to petition for grant.

3. The objector testified that she is the 1st wife of Charles Otina and her grievance is that Charles has divided his parcel of land between her and his second wife. That he later sold a substantial part of the portion he occupies with his second wife. She fears that he will demand part of what is left for her and her children.
4. The issue for consideration is whether the objector is entitled to be considered among the persons having priority in obtaining the grant and whether she is a beneficiary of the deceased's estate. These issues are dealt with by **section 66** of the ***Law of Succession Act (Chapter 160 of the Laws of Kenya)*** which provides as follows;

> *66. When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following preference –*

*(a) surviving spouse or spouses, with or without association of other beneficiaries;*

*(b) other beneficiaries entitled to intestacy, with priority according to their respective beneficial interests as provided by Part V;*

*(c) the Public Trustee; and*

*(d) creditors:*

*Provided that, where there is partial intestacy, letters of administration in respect of the intestate estate shall be granted to any executor or executors who prove the will.*

5. In addition under **Part V** of the ***Law of Succession Act*** (and especially **sections 35, 38, 40** and **41**), the wife and children of the deceased are the persons entitled to a share of the estate of the deceased. It is only the wife and children of the deceased who are entitled to inherit the deceased property. Persons who are dependants of the deceased during his lifetime are entitled to apply for provision from the estate under **section 26** of the ***Act***. These provisions clearly show that the wife of a beneficiary who is still alive is not one of the persons entitled to apply for or obtain the grant of letters of administration for the deceased's estate. She is also not a beneficiary in her own right.

6. In view of the foregoing, the objection and cross-petition are dismissed.

7. As this is a family matter, I make no order as to costs.

**DATED and DELIVERED at HOMA BAY this 9th day of October 2014.**

**D.S. MAJANJA**

**JUDGE**

Objector in person.

Mr Oguttu-Mboya instructed by Oguttu-Mboya & Company Advocates for the petitioner.