



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUSIA**

**SUCCESSION CAUSE NO. 391 OF 2009**

**IN THE MATTER OF THE ESTATE OF JOHN BARASA NYANGWESO----- DECEASED**

**AND**

**JOHN WABWIRE WANJALA----- PETITIONER**

**VERSUS**

**MARGARET NERIMA ONJELO----- OBJECTOR**

**RULING**

1. This Cause relates to Estate of John Barasa Nyangweso (The Deceased) who died Intestate leaving behind an Estate comprising of land parcel Bukhayo/Mundika/6220. The date of his Death is not agreed but as will be shortly apparent, nothing may turn on that disagreement.
2. The Petitioner in this case is John Wabwire Wanjala. His Petition is challenged by Margaret Nerima Onjelo (The Objector) who has filed Summons for Revocation or Annulment of Grant dated 8<sup>th</sup> January 2014. In the main, she argues that the Petitioner is a stranger to the Deceased and is undeserving of Grant.
3. It needs to be said here that the Objector herself had petitioned for Grant of Letters of Administration to the Estate of the Deceased vide another cause being Busia Succession Cause No. 352 of 2010. That petition was presented on 30<sup>th</sup> September 2011 which was about three (3) months earlier than the filing of this Petition when this petition was filed.
4. As noted in the opening paragraph of this decision, the date of Death of the Deceased is in dispute. A Certificate of Death used by the Petitioner to support his petition shows the date of Death to be 12<sup>th</sup> August 1998 while that by the Objector is 3<sup>rd</sup> March 1994. Although an explanation needs to be made as to how two certificates of Death bearing different dates of Death can be issued by the Registrar of Births and Deaths in respect to one Deceased person, that disparity may not affect the outcome of this dispute. This is because both dates of Death put Administration of the Deceased's Estate within the operations of the Law of Succession (Chapter 160 Laws of Kenya).
5. From the evidence presented to Court, the Deceased was neither married nor did he have children. The Objector's evidence is that she was the only sibling of the Deceased and that although they had different fathers, they had a common biological Mother called Teresa Nabwire.
6. What did the Petitioner have to say to this" He conceded that the Objector was the daughter of Teresa Nabwire. He then also said,

**“The husband of Teresa called Ojulo is the father of the Deceased.**

Clearly there is no disagreement that Teresa is the biological Mother of both the Deceased and the Objector but as they have different fathers they are therefore half-brother and half-sister. As to the Petitioner he claims to be nephew to the Deceased. But he also explained

**Ojalo married another wife after Teresa fell ill. Ojalo neglected Teresa and so my father Safano Manyala Odoyo decided to bring Teresa back to Kenya. Teresa and my father are brother and sister.** (my emphasis)

7. It bears repeating, the Deceased was without a spouse or child. Section 39 of the Law of Succession Act is the law on how the Estate of an Intestate leaving no surviving spouse or children should be dealt with. Section 39 provides:-

**39. (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-brother 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 contest here is between a half-sister to the Deceased and a nephew to the Mother of the Deceased. The contest must be resolved in favour of the Objector, she certainly has priority as ordered by Section 39(1).

8. For that reason, I allow the application for Summons for Revocation dated 8<sup>th</sup> January 2014. Any changes made in the Register to land parcel Bukhayo/Mundika/6220 shall be cancelled forthwith and proprietorship hereof reverted back to the name of the Deceased.

9. Costs to the Objector.

**Dated, signed and delivered this 8<sup>th</sup> day of December 2015.**

**F. TUIYOTT**

**J U D G E**

In the presence of :-

Oile – C//Assistant

Petitioner in person

Objector in person



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