



REPUBLIC OF KENYA



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**Obado v Omoro (Civil Case E017 of 2021)  
[2023] KEHC 22848 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22848 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL CASE E017 OF 2021  
RE ABURILI, J  
SEPTEMBER 27, 2023**

**BETWEEN**

**DOMINIC OGOL OBADO ..... APPLICANT**

**AND**

**BILDAD OMORO ..... RESPONDENT**

**RULING**

1. The genesis of this matter is that on 2<sup>nd</sup> June 2022, F. A. Ochieng J (as he then was) delivered a Ruling allowing the applicant Dominic Ogol Obado to have possession of a motor vehicle Pick up Registration No. KCR 998 U while the Respondent Bildad Omoro was to have possession of the motor vehicle Toyota Allion Registration No. KCU 552M pending the hearing and determination of this suit on its merits. The applicant was also allowed to have possession of land parcel No. Nyalenda B/2819 and warned not to sell, alienate or encumber the title thereto.
2. All the above properties are said to belong to the deceased Beryl Aluoch, who is stated to be the alleged 'wife' to the Respondent Bildad Omoro and a sister to the applicant herein Dominic Ogol Obado.
3. These proceedings were initiated by way of originating summons for possession of the properties aforesaid by the applicant herein, brother to the deceased to the exclusion of the Respondent alleged husband who claims that the property in issue was acquired by him jointly with the deceased Beryl Aluoch prior to her demise although the said property was registered in her sole name.
4. The application by the applicant brother to the deceased Beryl Aluoch seeks to review the ruling of F. A. Ochieng J (as he then was). On the other hand, the Respondent's application dated 21<sup>st</sup> July 2022 seeks for orders of leave of this court to be granted to the applicant to cite the Respondent Bildad Omoro for contempt of court and to hold him as such for being in contempt of court order and to commit him to jail for such period as the court may please.



5. I will commence with the application dated 22<sup>nd</sup> June 2022 for review of the Ruling of June 2<sup>nd</sup>, 2022. In that application filed by the Respondent now Applicant Bildad Omoro, he prays that the order of 2<sup>nd</sup> June 2022 be reviewed and set aside and substituted with an order that he maintains the possession of Motor Vehicle Registration No. KCR 998U Isuzu Pick-up.
6. Further, that this court does order that the applicants' continued possession of the deceased's property and house amounts to intermeddling until succession of the deceased's estate is commenced to completion. He also prays for costs of the application.
7. The grounds upon which the application is predicated are on the face of the application as supported by the affidavit sworn by Bildad Omoro Ochieng on 22<sup>nd</sup> June 2022.
8. Simply put, the Respondent/Applicant avers and deposes that Motor Vehicle Registration No. KCR 998U Pick-up is subject to a contract and hence bound by its terms which indicate that the Respondent is the next of kin thereby rightly entitled to the said Motor vehicle.
9. That the Applicant is not a dependant of the deceased hence he is excluded from possession of the property Nyalenda B/2819 which is an asset in the estate of the deceased.
10. That the Respondent is the rightful owner of Motor Vehicle Registration No. KCU 552M Allion and hence its possession is as of right and not in dispute.
11. That the application was made timeously and that it is in the interest of justice that the orders of 6<sup>th</sup> February 2022 are set aside.
12. In the supporting affidavit, the Respondent reiterates the grounds maintaining his stance and annexing copy of Loan protection proposal for Kshs.2,000,000 dated 31<sup>st</sup> August 2018 naming the Respondent as next of kin. The Respondent deposes that as the estate of the deceased had not been administered, the applicant should not possess any of the properties, of the estate of the deceased Beryl Aluoch as the said estate had not been administered or distributed.
13. Opposing the application for Review and setting aside of the orders of 2<sup>nd</sup> June 2022, the applicant Dominic Ogol Obado swore a Replying affidavit on 15<sup>th</sup> July 2023 deposing that he was the husband to the deceased Beryl Aluoch hence, pursuant to Section 29 of the Law of Succession Act, he is the closest relative in the degree of consanguinity despite the fact that they were not blessed with any issue.
14. He annexed copy of eulogy which shows that the Respondent is her only brother and that she was married to the applicant in 2003 after courting for two (2) years from 2001 when they met and that the two had lived together until her demise.
15. The applicant deposes that no law allows aggressive in-laws to take over the property of their sister from him simply because they had no children despite living together for 17 years and that he even paid for her coffin and hospital as well as mortuary fees, as shown by the copies of receipts annexed.
16. Further, that during their marriage, they jointly acquired properties Nyalenda B/2819 and Motor Vehicles KCR 998U Pick –up and KCU 522M Allion hence he is the rightful and legal owner of the Motor Vehicles Registration No. KCR 998U Pick-up and KCU 552M Allion as well as land parcel No. Nyalenda B/2819.
17. That there is nothing wrong with the orders of Ochieng F. A. J rendered on 2<sup>nd</sup> June 2022 and that since there was no application for stay of the said orders, the Respondent should have complied with the same hence he is in contempt of court orders yet he is using the Motor Vehicle which he should have surrendered as ordered by the court.



18. That an insurance cover does not give the Respondent the ownership of the Motor Vehicle and that those are the issues that the court will determine at the trial.
19. That the annexure B001 was not proof of beneficial interest but strictly for burial purposes and nothing more. Further, that the document is a forgery as the signature on it is different from the deceased's known signature on the other documents such as loan application form annexed.
20. That albeit the Respondent denies knowing the applicant as husband to the deceased Beryl Aluoch, the Respondent would visit the Applicant at his residence where he lived with the deceased in Nyalenda and that the applicant would serve the Respondent tea in the absence of the deceased and that they lived in the house they jointly constructed with the deceased. That he met the Respondent in every funeral and family gathering and that it was in bad taste and un-African to deny in-laws in whose houses one had eaten.
21. In the Applicant's application dated 21<sup>st</sup> July 2022, he seeks for the orders of leave and citing of the Respondent Bildad Omoro for contempt of court for failure to comply with the orders of 2<sup>nd</sup> June 2022 to release Motor Vehicle Pick up to the Applicant pending the hearing and determination of the issues in the suit; and to have the Respondent committed to jail for a period that the court may determine. The application was predicated on the grounds and supported by an affidavit sworn by the applicant asserting and deposing that the Respondent is disobeying the court orders at his own will despite service of the order upon him hence he must be punished for contempt of court. He annexed copy of the order and affidavit of service of the order dated 2<sup>nd</sup> June 2022 upon Siganga & Company Advocates vide letter dated 23<sup>rd</sup> June 2022 and receipt of the said order on 24<sup>th</sup> June 2022 at 2.00pm. The affidavit of service by Julius Otieno Raminya shows that on 7<sup>th</sup> June 2022 he served the order on the Respondent who is a dealer in curtains and Beddings at his business place situate along Miriu Street behind Kisumu District Hospital at 1.30pm and that the Respondent declined to append his signature on the copies saying the Ruling was not properly delivered according to the applicant, disobeying the court order undermines the administration of justice and impedes and obstructs the cause of justice.
22. The applicant also filed a further affidavit annexing an identity card of the deceased and what he says was her signature as opposed to that on the loan protection form and the application for the Kshs.2 million loan facility with Family Bank dated 30<sup>th</sup> August 2018.
23. In response to the further affidavit sworn by the applicant on 1<sup>st</sup> February 2023, the Respondent swore a Supplementary affidavit filed on 31<sup>st</sup> March 2023, though undated wherein he deposes that he had not disregarded the orders of 2<sup>nd</sup> June 2022 willfully and that he had filed an application dated 22<sup>nd</sup> June 2022 seeking for review of the impugned orders; and was ready to be guided by the court on the application for review as the judge who rendered the ruling which is sought to be reviewed had been elevated to the Court of Appeal, hence the application for review was yet to be heard before the new court. He denied knowledge of the deposition at paragraphs 9 and 10 of the further affidavit sworn on 1<sup>st</sup> February 2023 by the applicant, on whether the Loan protection form was forged and or the signature thereon not belonging to the deceased.
24. The two applications were canvassed of by way of written submissions. On the 1<sup>st</sup> application for review of the orders of 2<sup>nd</sup> June 2022, the Applicant/Respondent's counsel submitted relying on Order 45 Rule 1(b) of the *Civil Procedure Rules* and Section 80 of the *Civil Procedure Act* on conditions for review and submitted that in any event, the applicant lacked the requisite capacity to institute these proceedings as he is not the personal representative of the estate of the late Beryl Aluoch nor did he have any legal standing to sue on behalf of her estate.



25. It was submitted that there was no evidence of marriage between the Applicant and the Deceased; that the Motor Vehicle KCR 998U Pick-up was subject of a contract as shown by loan protection proposal form dated 31<sup>st</sup> August 2018 filled by the deceased with Family Bank showing that the Respondent was the next of kin of the deceased in respect of the loan hence he is the rightful claimant.
26. Further, that the ODPP Winam wrote to the OCS Kondele Police station on 28<sup>th</sup> June 2021 stating that the Respondent was the rightful owner of the said Pick-up Motor Vehicle KCR 998U.
27. That there are material errors in the Ruling of 2<sup>nd</sup> June 2022 necessitating Review thereof. Reliance was placed on the cases of *Muyodi vs Industrial & Commercial Development Corporation & Another* (2006) 1 EA 243 at 246 where an error apparent on the face of the record was described citing *Nyamongo & Nyamongo vs Kogo* (2001) EA 174.
28. Counsel for the applicant submitted that the order for the Applicant to take possession of Motor-Vehicle Registration No. KCR 998U Pick-up is a material error which undermines the soundness of the decision and may result into a miscarriage of justice hence the prayers for review of that order.
29. On the Applicant's prayer for the Respondent to be cited for contempt of court, counsel for the Respondent filed submissions on 19<sup>th</sup> April 2023 urging that the application for review of the orders alleged to have been disobeyed by the Respondent ought to be considered first before the contempt application.
30. After defining what contempt of court is and its elements as stipulated in *Halsbury's Laws of England* Vol. 9(e) 4<sup>th</sup> Edition and *Contempt in Modern New Zealand* cited in *North Tetu Farmers Co. Ltd vs Joseph Nderitu Wanjobi* (2016) eKLR, the Respondent submitted that there was no evidence that the Respondent deliberately disobeyed the orders of 2<sup>nd</sup> June 2022. He relied on *Sam Nyamweya & Others vs Kenya Premier League Limited & Others* (2015) eKLR determined by this court exhaustively relying on *Stewart Robertson vs Her Majesty's Advocate* 2007 HCAC 63 by Lord Clerk that contempt of court is constituted by conduct that denotes willful defiance of or disrespect towards the court or that willfully challenges or affronts the authority of the court or the supremacy of the law, whether in civil or criminal proceedings.
31. The Respondent contends that the Motor Vehicle Pick-up in issue is subject of a contract that he is the next of kin hence the application for review. Further, that his conduct was not to disregard the orders of the court at will as he filled the application for review within reasonable time to resolve the issue at hand. He urged the court to decline the invitation to commit him for contempt of court.
32. On the part of the applicant, he filed two sets of submissions, one in support of his application for contempt of court and the other opposing the prayers by the Respondent seeking for review of the orders issued on 2<sup>nd</sup> June 2022 for possession of the Pick-up Motor Vehicle.
33. It was submitted that this court has jurisdiction to punish for contempt of court under Section 5 of the *Judicature Act*, following the declaration of unconstitutionality of the *contempt of court Act*; that applicant had proved to the standard required for contempt of court orders to issue against the Respondent as stipulated in *Mutitika vs Baharini Farm Ltd* (1985) KLR 229, 234; that there was personal service of the order upon the Respondent and his counsel on 7<sup>th</sup> June 2022 as shown by the affidavit of service of Julius Otieno Ramunya; that knowledge of the order was sufficient as stipulated in Order 5 Rule 8(1) of the *Civil Procedure Rules* and as was held in *Basil Criticos vs AG & 8 Others* (2012) eKLR and that knowledge of the order supersedes personal service as was held in *KTDA vs Francis Atwoli & 5 Others* Pet. No. 64 of 2010 and *Justus Wanjala Kisiangani & 2 Others vs City Council of Nairobi & 3 Others* (2008) eKLR where it was held that where the order was issued in the presence



of both counsel for the parties then the Respondent had full knowledge thereof and was under an obligation to obey it. In this case, it was submitted that both counsel for the parties were present on the date of the Ruling hence the Respondent had full knowledge of the existence of the said order even if he were not served by the said order.

34. I however observe that the Respondent has not denied service of or knowledge of the order in question which he also seeks in his separate application, to have it reviewed or set aside. The applicant prayed for the orders sought.
35. In his submissions opposing the application for review of the orders of 2<sup>nd</sup> June 2022, the Applicant submitted that under Section 80 of the Civil Procedure Act and Order 45(1) (b) of the Civil Procedure Rules, the condition for review were not met hence the application should be dismissed.
36. On whether the Respondent should continue being in possession of the Motor Vehicle KCR 998U Pick-up and the property house it was submitted that the loan protection form relied upon by the Respondent was only for purposes of last respects and that the applicant was under Section 29(c) of the Law of Succession Act the closest to the deceased in the order of dependency of consanguinity set out therein.
37. It was further submitted that allowing the Respondent to be in possession of an occupy the deceased's property was promoting intermeddling with the estate of the deceased yet the applicant was her husband and therefore had priority to inherit her.
38. Counsel for the Applicant prayed for dismissal of the application for review, relying on several decisions to support his point of view.

### **Determination**

39. I have considered the two applications, one for contempt of court and the other for review of the orders of 2<sup>nd</sup> June 2022 which the Respondent is alleged to be in contempt of.
40. The issue for determination in my view is one and that is whether these proceedings or suit is sustainable. I observe that the Respondent raised a very important question of the locus standi of the applicant to bring this suit, which relates to the restate of the deceased Beryl Aluoch, which issue the court before me did not determine despite its disclaimer on the future of this suit.
41. I further observe that the applicant has not addressed this court on that very important issue. I will nonetheless determine it in the first instance as it is equivalent to determining the question of jurisdiction of the court.
42. The Respondent raised a very important issue of locus standi of the applicant to institute these proceedings, which issue was not wholly determined by the previous court. He maintained in his submissions by counsel that the absence of grant of letters of administration by the applicant renders the suit void ab initio, among other grounds which challenge the existence of a marriage between the deceased and the applicant and ownership of the properties left behind by the deceased Beryl Aluoch.
43. I will deal with that issue of locus standi first because locus standi is synonymous with jurisdiction of the court to hear and determine the dispute before it. This court is alive to the provisions of Article 50(1) of the Constitution on the right of every person to institute proceedings before a court of law or tribunal to ventilate their grievances. The court is also aware, and I take judicial notice of the requirement in law that to institute suit on behalf of the estate of a deceased person seeking for entitlement to assets of the deceased, or against any person suspected to be an intermeddler of the estate of the deceased, one must first and foremost, either obtain a limited grant limited for purposes of filing and prosecuting



suit or a full grant to administer the estate of the deceased person. There are no two ways about it. Furthermore, Section 2 of the *Civil Procedure Act* defines a legal representative to mean person who in law represents the estate of the deceased person, and where a party sues or is sued in a representative capacity, the person on whom the estate devolves on the death of the party so suing or sued.

44. In this suit, the main applicant sought vide the Originating summons filed on 25<sup>th</sup> August 2021 for orders and determination of question of whether it was in order for the Respondent to intermeddle in the estate of Beryl Aluoch to the exclusion of the applicant and the dependants'/beneficiaries of the estate; whether the court should order that the letters of administration in the estate of the Beryl Aluoch should be taken out by the applicant or dependants of her estate; whether a permanent injunction should be directed to the Respondent by himself, his servants, agents or other claiming title or acting on his behalf from remaining in, occupying, continuing to occupy or doing any act on the 2 Motor Vehicles KCR 998U Pick-up and KCU 552M Allion, pending the hearing and determination of this Originating Summons; permanent injunction in respect of the above 2 named motor-vehicles; whether the chief of West Kolwa Location, Otieno Kabisai should be ordered to provide Letters of Administration to the applicant to complete the succession process and whether costs should be provided for.
45. In the grounds, it was asserted inter alia, that the chief West Kolwa location had refused to issue the applicant with a letter to enable him apply for letters of administration hence he could not apply for Petition for a grant. Further, that the Respondent was intermeddling with the estate properties comprising the 2 motor vehicles named above and land parcel No. Nyalenda B/2819 and had taken all the Motor Vehicles into his possession making it impossible for the applicant and other dependants to use them hence causing him immense hardship.
46. The applicant also filed an application under certificate of urgency, which application was heard and determined interpartes with the court ordering that the applicant faces possession on the Pick-up while the Respondent keeps possession of the Toyota Allion Motor Vehicle with a condition that each of them settle any outstanding loans that were due and payable on the said motor vehicles.
47. I have read the affidavits sworn by the applicant and Respondent and from the onset, there is no evidence that either of them is a legal representative of the estate of the deceased Beryl Aluoch. The applicant claims to be the deceased's husband while the Respondent deposes that he was the deceased's brother and next of kin as per the loan protection form dated 31<sup>st</sup> August 2018. Each of them claim to be beneficially and legally entitled to the properties left behind by the deceased Beryl Aluoch.
48. The learned Judge who determined the interlocutory application was faced with two competing interests, that of the claim of existence of a customary marriage between the deceased and the applicant and who should have possession of the properties left behind by the deceased. He did not address the issue of locus standi of the Applicant and even the Respondent, which was a substantive and preliminary issue.
49. The learned Judge, however, gave a disclaimer when making the impugned orders that the dispute could not be resolved by way of an Originating Summons. He however nonetheless left the issue to the parties to give views on how they would wish to have the case move forward.
50. In my view, that disclaimer gave the parties the signal that the court may, after all, eventually, find, that without any apologies, the parties before it had no locus standi to battle it out in court over the deceased's estate without either of them taking out letters of administration, whether limited or full grant.



51. Issues of who is legally or beneficially entitled to the properties left behind by the deceased Beryl Aluoch can only be litigated upon in a succession court and not in civil proceedings.
52. This is not to say that the applicant or Respondent have no valid complaints against each other, but that, that or those complaints are being litigated not only in a wrong forum, but also by parties whose locus standi to litigate is lacking, legally speaking.
53. Determination of who is the rightful owner of the 2 motor vehicles and land left behind by the deceased herein Beryl Aluoch are not issues which this court can ventilate in an Originating Summons.
54. Furthermore, the issue herein is not one of form or a procedural technicality but one that goes to the root of the case whereupon parties who lay claim to the property left behind by a deceased person can only do so if they have a grant of letters of administration whether limited or temporary grant and not to sue in an ordinary suit seeking for orders to grant them possession without legal authority. To do otherwise will be to invite parties to meddle with the estate of the deceased which is contrary to Section 45 of the *Law of Succession Act* which criminalises intermeddling with the estate of the deceased.
55. For the above reasons, the orders that commend for issuance by this court are to strike out the entire suit herein which was filed without the legal standing and the orders made on 2<sup>nd</sup> June 2022 remain discharged in whole.
56. Consequently, the prayers for contempt of court cannot issue as the orders made on 2<sup>nd</sup> June 2022 were made in per curiam as none of the parties had the necessary locus standi to institute or defend the suit as no petition for grant or limited grant had been made and or grant issued to any of the parties to this dispute to give them authority to sue or be sued to protect the estate of the deceased.
57. Without a grant, no person can deal with the estate of a deceased person including the preservation or collection of the estate. Even without the chief's letter, the Applicant should have petitioned for a grant limited to filing of the suit. He did not have to seek leave of court or an order compelling the Chief to issue him with a letter.
58. A similar situation arose in *Hawo Shako vs Mohamed Uta Shanko (2018) eKLR* where the Court reiterated the settled consensus that a party lacks the locus standi to file a suit before obtaining a grant limited for that purpose only. The court stated in addition that:

“This legal position is quite reasonable in that if the Plaintiff or applicant has not been formally authorised by the court by way of a grant limited for that purpose, then it will be difficult to control the flow of court cases by those entitled to benefit from if each beneficiary is allowed to file a suit touching on a deceased's estate without first obtaining a limited grant, then several suits will be filed by the beneficiaries. It is the limited grant which gives the plaintiff the locus to stand before the court and argue the case. It does not matter whether the suit involves a claim of intermeddling of the estate or the preservation of the same. One has to first obtain a limited grant that will give him or her the authority to file the suit.

The leave of the court is not required before one seeks a grant limited to the filing of the suit. The orders granted to the Plaintiff herein authorising her to seek letters of administration are superfluous and cannot assist her. She ought to have sought a limited grant first before filing this suit. The Judgment by Justice M. A. Angawa (as she then was) in Nairobi Session Cause No. 171 of 2000 in the matter of the estate of Moraji Bhanji Dhanak (Deceased) delivered on 30<sup>th</sup> November 2000 is to the effect that a grant limited to the filing of a suit has to be issued before the suit is filed.”



59. The court in the above suit further cited the Court of Appeal decision in *Morjaria vs Abdalla* (1884) KLR, 490 P. 491 where it was stated that:

“Notwithstanding that the grant of letters of administration that the grant of letters of administration ad colligenda bona was not a form of grant appropriate for this case and it did not follow form 47 in the first schedule to the *Law of Succession Act* as provided by Rule 36(2) of the Probate and Administration Rules, the grant was specifically limited to ‘the purposes only’ of representing the applicants in his appeal and those words in themselves constituted a valid grant under Rule 15 enabling the appellant’s son and his step mother to represent the appellant in this appeal.”

60. The court further referred to the decision in *Julias Adoyo Ongunga vs Francis Kiberenge Abano* Migori HC Civil Appeal No. 119 of 2015 where Mrima J. stated as follows on the issue of a party filing suit without having obtained a limited grant; and I concur that:

“Further, the issue of locus standi is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without locus standi in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. Locus standi relates mainly to the legal capacity of a party. The impact of a party in a suit without locus standi can be equated to that of a court acting without jurisdiction. Since it all amounts to null and void proceedings. It is also worth noting that the issue of locus standi becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves other beneficiaries or interested parties.”

61. It goes without saying that for a party to institute or sustain a suit in a court of law, where a deceased person’s estate is involved, that person must first and primarily, petition and obtain a grant of letters of administration to administer the estate of the deceased person in question, or petition and obtain a limited grant, ad colligenda bona, limited only for purposes of instituting the suit especially where preservation and collection of the estate of the deceased is concerned and in the intervening or ensuing period, he or she may petition for a full grant.

62. A grant whether full or limited for filing suit is the authority that gives to a litigant locus standi, or capacity to sue or be sued in a matter involving an estate of the deceased person. There is no right to sue simply because the person or litigant believes so strongly that they are the persons legally or beneficially entitled to inherit the estate of the deceased as contemplated in Section 29 of the *Law of Succession Act* which defines who a dependant is.

63. In the instant case, there is no doubt that neither the applicant nor the Respondent obtained any grant whether limited or full grant to administer the estate of the deceased. Each one of them claim to be either beneficially or legally entitled to the properties which are registered in the name of the deceased Beryl Aluoch, with the applicant claiming to be her husband while the Respondent claims to be her brother.

64. A grant in respect of an estate of property left behind by the deceased is the only key for any person claiming to be beneficially or legally entitled to the said properties, to access the court and ventilate their grievance. Without the grant, whether limited or full grant, allowing the filing of the suit, the initiator



of the suit, like in the instant case, is tantamount to entering a closed room without opening the door. As was correctly stated by Chetembwe J in *Hawo Shanko vs Mohamed Uta Shanko* (*supra*) that:-

“ All what the court can tell someone who is before it without having obtained a grant limited to the filing of the suit is that despite the validity of the suit or the strength of the case, the court cannot hear the suit as the initiator thereof lacks the capacity to file the suit. The correct procedure is not to allow the plaintiff to go back and obtain a limited grant for that purpose and then to allow him to continue with the suit. The suit as initiated becomes void ab initio, and cannot be resurrected by the issuance of a subsequent limited grant.”

65. Furthermore, Section 54 of the *Law of Succession Act* as read with Schedule Five to the Act provides for limited grants of representation for specific purposes only and at paragraph 14 & 15 of the 5<sup>th</sup> Schedule, the law allows for limited grant for filing suit only.
66. Nothing prevented the applicant herein from either obtaining a limited grant for filing suit or in the alternative, petition for a full grant and seek for preservation and collection of the properties in the estate of the deceased Beryl Aluoch.
67. Thus, in the instant case, the applicant could still have invoked Section 67 of the *Law of Succession Act* which provides that a limited grant need not be publicised for purposes of inviting objections. This Section is read together with Rule 36(1) of the *Probate and Administration Rules*.
68. Nonetheless, the applicant could still have petitioned for a full grant in Succession proceedings to invite objection from the Respondent upon which the court would have been invited to allow the preservation and collection of the deceased's estate.
69. I hasten to add that one's relationship to the deceased does not cloth such a party with the locus standi. A grant of representation whether full or limited does.
70. In the end, I find and hold that as the Plaintiff/main applicant in the OS herein did not obtain a grant of letters of administration intestate whether full or limited to the filing of this suit, which limited grant was not dependent on the availability of the Chief's letter listing the dependants of the deceased.
71. I find that this suit is a non-starter ab initio and the same cannot be sustained.}}
72. This suit is hereby struck out and the file closed. However, each of the parties hereto are made aware that any attempt to dispose of or alienate the properties forming part of the estate of the deceased before a grant of letters of administration intestate is obtained and confirmed is unlawful as it amounts to intermeddling with the estate of the deceased and is punishable as a criminal offence with imprisonment.
73. This suit having been struck out and the file closed, no other application shall be entertained in these proceedings. Parties to approach the court only with a grant or file succession proceedings and apply for orders preserving the estate of the deceased from intermeddling.
74. As none of the parties are successful in their quest for the respective orders that they have sought before this court, I order that each party shall bear their own costs of this suit and any subsequent applications which were all anchored on no suit at all.
75. I so order
76. File closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF SEPTEMBER, 2023**



**R. E. ABURILI**  
**JUDGE**

