



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 53 OF 2012**

**(Being an appeal arising from Judgment and Decree in Eldoret Chief Magistrate's Court Civil Suit No. 1029 of 2009 delivered by D.K. Kemei Senior Principal Magistrate )**

**BETTY JEPKEMOI (Suing as representative of the estate of the late**

**SAMMY KIPTOO (DECEASED).....APPELLANT**

**Versus**

**PHILIP LIMO.....1ST RESPONDENT**

**SALAH ABDI NOOR.....2ND RESPONDENT**

**J U D G M E N T**

1. On 27/6/2009, the deceased Sammy Kiptoo was involved in a road traffic accident along Eldoret – kisumu road at Eldoret Polytechnic as he was cycling along the said road. The motor vehicle involved was Registration No. KBF 339 which belonged to the 2<sup>nd</sup> Respondent. As a consequences of the said accident he was rushed to Moi Teaching and Referral Hospital but died while undergoing treatment.
2. The appellant who is a sister to the deceased took out letters of administration and filed the suit claiming inter alia damages under the Law Reform Act and the Fatal Accident Act.
3. Evidence was advanced on how the accident occurred. **PW1 Betty Chepkemboi Tanui**, **PW2 Patrick Wandabwa** who witnessed the accident and **John Karuri** who worked with the deceased selling Mitumba shoes along Lengut hotel within Eldoret town and **P.C. Lucy Okumu** from Langas police station testified on behalf of the appellant.
4. The Respondents on their part did not call any witness and neither did they produce any exhibits. They closed their case. They however filed their amended defence denying the charge.
5. The trial court ( Hon. Kemei PM) as he then was dismissed the suit for inter alia that the appellant lacked locus standi to file the same for want of letters of administration. Secondly that there was a prior agreement between the deceased father and the respondent to settle the matter out of court.
6. The said dismissal prompted this appeal. The central argument of the appeal is the fact that the trial court erred when it dismissed the suit for lack of Letters of Administration by the appellant.
7. When this matter came up for hearing I ordered that the same be determined by way of written submissions. The parties obliged and I have perused the same extensively together with the cited authorities. The court has equally perused the trial court's proceedings.
8. What is clear is that the cause of deceased death was the accident that occurred on the material day as per the evidence on record. In the absence of any rebuttal by the respondent, it is my considered view that the evidence adduced by the appellant witness was the truth.
9. Did the appellant at the time of filing suit have letters of administration? Section 82 of the Law of Succession Act clearly stipulates who personal representative is. Clearly one cannot intermingle with the deceased estate without the grant of letters of administration whether limited or otherwise.
10. I have perused exhibit P1, a limited grant of Letters of administration ad litem. The same shows that they were issued to Betty Jepkemoi on 17/11/2009 and signed on 9/3/2011.

11. The argument is what was the effective date? Is it the date when it was issued or when it was signed? I think it was the date it was issued. The extraction and signing is purely an administrative exercise. The effective date is when the Judge pronounced himself.
12. From the exhibit, the date indicated as when it was signed was 9/3/2011 although Justice J.R. Karanja issued it on 17<sup>th</sup> November 2009.
13. Having stated so, I find that the plaint was filed on 21/12/2009 by the appellant. It therefore means that on the strength of the limited grant afore stated, the appellant had capacity to file the suit. On that ground alone the appeal succeeds.
14. As regards the alleged agreement between one Joseph Kiptanui Marindany and Abdi Aden and Philip Limo which I do not think it was produced, even if it had been produced the same was dealing purportedly with the deceased estate without either of parties procuring letters of administration. In any event the appellant was not written as the sole administrator of the deceased estate.
15. Having found that the suit was properly before the court, I shall allow this appeal. As regards damages I do not find any fault in computation by the trial court. The amount that the court would have awarded was not manifestly low or high. At any rate the same was not a subject of this appeal or cross- appealed.
16. In the premises this appeal is allowed, the lower court judgement dismissing the suit set aside. The award of damages by the lower court is adopted in its entirety.
17. The appellant shall have the costs of this appeal as well as in the lower court.

Orders accordingly.

**Delivered, signed and dated at Eldoret in open court on this 19<sup>th</sup> day of October, 2018.**

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**H.K. CHEMITEI**

**JUDGE**

**19/10/18**