



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**PROBATE AND ADMINISTRATION DIVISION**  
**SUCCESSION CAUSE NO. 2808 OF 2015**

**IN THE MATTER OF THE ESTATE OF S C M (DECEASED)**

J K (Suing as the next of Kin of Minor

D K .....APPLICANT/OBJECTOR

-versus-

D C (Referred to in this suit as)

D J .....RESPONDENT

**R U L I N G**

1. The deceased to whose Estate these proceedings relate is M S C M. On 27<sup>th</sup> January 2016 one J K filed a Chamber Summons under Certificate of urgency seeking orders to restrain the Respondent, D J and any of her agents from collecting any payments, stipends, terminal benefits, and/or benefits, and/or monies arising from the Estate of the deceased, against the consent of the Applicant/widow, pending the determination of the Application. The court granted interim stay orders in terms of paragraph 4 of the said Chamber Summons.
2. The Applicant thereafter filed a preliminary objection stating that the Respondent is using the Limited Grant in her possession to pursue the Gratuity payable to the Estate by the Director of Pensions. In the pleadings of both the Applicant and the Respondent each purports to assert their rights as the widow of the deceased. Those applications and the responses thereto however, have no basis as no Petition for grant of Letters of Administration intestate, or with will attached has been filed in this Estate.
3. The Respondent obtained a Limited Grant of Letters of Administration Ad Litem on 13<sup>th</sup> November 2015, with regard to the Estate, limited only for purposes of filing suit. It is not clear what the nature of the intended suit was, or whether it has since been filed. In any case it is important to point the parties to the restrictions provided by **section 55(1)** of the **Law of Succession Act** as follows:

**“No grant of representation, whether or not limited in its terms, shall confer power to distribute any capital assets constituting a net estate, or to make any division of property, unless and until the grant has been confirmed as provided by section 71 Law of Succession Act.”**

A limited grant cannot be confirmed and cannot therefore confer power to distribute the Estate. Furthermore the grant herein was limited for purposes of filing suit only.

4. Any of the parties therefore, purporting to claim Pension or Death Gratuity due to the Estate of the deceased without having first obtained a grant, and had it confirmed, is guilty of intermeddling with the property of the deceased as proscribed under **section 45(1) Law of Succession Act**. The said section states that except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
5. Upon the court issuing the Limited Grant in Succession Cause No. 2808 of 2015, which is actually a special grant, the said cause was spent. It cannot be kept alive by a plethora of documents and applications being filed therein. The parties herein should therefore file a substantive petition for grant of Letters of Administration in the Estate of the deceased before any other application pertaining to the Estate can be entertained.

It has been so ordered.

**SIGNED DATED and DELIVERED** in open court this **27<sup>th</sup> day of April 2016**

.....

**L. A. ACHODE**

**JUDGE**

In the presence of .....advocate for the Applicant

In the presence of .....advocate for the Respondents