



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

SUCCESSION CASE NO. 84 OF 1996

IN THE MATTER OF THE ESTATE OF

ANDREW GITHURI MWANGI..... DECEASED

AND

CHARLES MWANGI GATHURI..... PETITIONER

RULING

1. The Petitioner JOSEPH KINYUA GATHURI has moved this court for grant of letters of administration Ad litem for the estate of Charles Mwangi Gathuri in this cause which is in respect of the estate of ANDREW GATHURI MWANGI to enable him on his behalf and on behalf of the other beneficiaries proceed with the petition now pending before the court and that grant will enable him be substituted in place of the Petitioner herein.
2. It is supported by the annexed affidavit of the applicant wherein he deponed that he is one of the children/beneficiary of the estate of Andrew Gathuri Mwangi deceased where his brother Charles Mwangi Gathuri was the Petitioner and who died on 5th September 2012.
3. He deponed that the grant is only limited for purposes of proceedings with and concluding pending petition.
4. From the application before the court the only issue for determination is whether the applicant can file for grant of letters of administration Ad litem in respect of the estate of the Administrator in the succession cause wherein he is the administrator.
5. Section 67 of the Law of Succession Act provided that
- 6.
7. ***“No grant of representation other than a limited grant for collection and preservation of assets shall be made until there has been published notice of the application for the grant inviting objection thereto to be made known to court within a specified period of not less than thirty days from the date of publication and that the period so specified has expired”.***
- 8.
9. It is therefore clear that the application for grant of letters of administration in respect of the estate of Charles Mwangi Gathuri ought to have been filed independently of the estate of Andrew Gathuri Mwangi and therefore the petitioner has approached the court in the wrong forum.
10. It is only after the grant of letters of administration have been issued to the applicant herein in respect of the estate of the petitioner that the same can move this court for substitution.
11. I have further noted that there are two applications pending before this court by the applicant these being the following:

a) Application dated 12/4/2010 in which the same sought the revocation of the grant.

b. Application dated 2/3/2012 for rectification of grant.

1. I therefore find that the application is improperly filed in this cause and would therefore dismiss the same with no order as to cost.
2. Dated, signed and delivered at Nyeri this 4th day of April 2014.

J. WAKIAGA

JUDGE

Miss Ndegwa for the applicant.

Court: Ruling read in open court in the presence of Miss Ndegwa.

J. WAKIAGA

JUDGE