



**REPUBLIC OF KENYA**

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

**ENVIRONMENTAL AND LAND DIVISION**

**ELC CIVIL NO. 716 OF 2012**

**YOSE MUSELA BIDALI(suing as the legal representative of Lihasi Bidali)**  
..... **PLAINTIFF**

**VERSUS**

**MANAKAMU AGENCIES LIMITED..... DEFENDANT**

**GRACE WAMBUI BIDALI.....INTERESTED PARTY**

**BIDALI LIHASI..... INTERESTED PARTY**

**RULING**

The interested parties have by Notice of Motion dated 4<sup>th</sup> June 2013 sought leave of the court to be enjoined as interested parties in the suit and to be allowed to participate in the court proceedings as such interested parties. The interested parties premise their application firstly on the grounds set out on the face of the application and secondly on the grounds set out on supporting affidavit sworn by **Bidali Lihasi**, the 2<sup>nd</sup> interested party applicant on 4<sup>th</sup> June 2013.

The Applicants aver that they have since 1972 lived and occupied the house on **L.R.NO.209/118/77** as the second family of the late **Lihasi Bidali** (deceased). The 1<sup>st</sup> Applicant states she was the 2<sup>nd</sup> wife of the deceased and the 2<sup>nd</sup> Applicant an issue of the marriage between the 1<sup>st</sup> Applicant and the deceased. The Applicants claim the plaintiff omitted to involve them in the funeral arrangements of the late **Lihasi Bidali** and they are apprehensive of being disinherited by the plaintiff who has obtained grant of letters of Administration **Ad Litem** to the deceased estate to the exclusion of the Applicants. The 2<sup>nd</sup> interested party in the affidavit sworn by him in support of the application for joinder states that he had informed the plaintiff that he must be included in the case to be instituted to challenge those persons who were claiming their late father’s house but the plaintiff failed to include him in the grant of letters ad litem and considering that the plaintiff had sidelined the Applicants household during the burial arrangements the Applicants have a genuine fear that their interest would not be properly represented in the instant case unless they are enjoined to the suit.

The plaintiff in response to the interested parties application for joinder filed grounds of opposition dated 3<sup>rd</sup> October 2013 which are as follows:-

1. That the application filed is defective, bad in law misconceived and devoid of merit.
2. That the applicant has no locus standi at all.
3. That the applicant has no ascertainable or sufficient interest in the estate of Lihasi Bidali to

- warrant intrusion into this suit.
4. That the application is purely meant to delay the expeditious conclusion of this suit.
  5. That the application amounts to abuse of court process.

The plaintiff in this suit has brought the instant suit as legal representative of Lihasi Bidali (deceased) by virtue of a Limited Grant of letters of Administration **ad litem** issued by the High Court on 4<sup>th</sup> October 2012. The said grant was limited only for the purpose of filing suit and did not include the distribution of the deceased estate which definitely had to await the issuing of the full grant to the deceased estate and the confirmation of the same. Under section 54 of the Law of succession Act Cap 160 Laws of Kenya a court can make a limited grant of representation. Section 55 (1) of the Law of Succession Act bars any distribution of assets until the grant is confirmed.

Section 55(1) of the Act provides:-

**“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”.**

The Law of Succession Act applies exclusively in all cases of intestate and testamentary succession to the estates of deceased persons as provided under section 2 (1) of the Act which provides thus:-

**2.(1) “Except otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of and shall have universal application to all cases of intestate and testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons”.**

The plaintiff has lawfully been appointed as the personal legal representative of the deceased pursuant to the Limited Grant of Letters of Administration **ad Litem** for the sole purpose of bringing this suit on behalf of the estate of the deceased. In case the Applicants were not satisfied with the appointment of the plaintiff as such for any reason and being beneficiaries of the deceased estate, the Applicants recourse was to go back to the court that issued the grant for its revocation and/or variation to include them. The intent and purpose of Limited grant of letters of administration ad litem issued for purposes of filing suit on behalf of the deceased estate is essentially to enable the personal representative to recover and collect the assets of the deceased estate for purposes of thereafter applying for a full grant to the estate of the deceased which would require to be confirmed under section 71 of the Succession Act for distribution purposes.

I have reviewed and considered the Applicants application and the submissions and authorities referred to me by counsel for the parties and my view is the suit before the court is not one to determine the interests of the individual beneficiaries to the deceased estate but rather the suit is to determine whether the deceased is still the owner of the suit property. Upon determination of the interest of the deceased in the suit property, if any, then the issue of succession shall be dealt with by the family court which shall determine who the beneficiaries of the deceased estate are and in what proportions.

Thus it is my view that the application by the interested parties to be enjoined in the instant suit is misconceived as they are not the appointed legal representatives of the deceased. In the instant matter the plaintiff by the limited Grant of Letter of Administration ad litem has bound himself and **“undertaken to administer such estate according to law (Limited as aforesaid) and until further representation be granted and render a true and just account thereof whenever required by law so to do”**. The court before which the grant of letters of administration was issued possesses a supervisory authority in regard to the succession matter until the full grant is issued and confirmed. The interests of the Applicants in so far as they may be entitled as beneficiaries to the estate of the deceased would be best served before that court. This court’s role will be limited to determining the issue as to the ownership of the suit property as between the deceased who is now represented by the plaintiff as the personal legal representative and the Defendants. Once that determination is done the plaintiff question of succession will kick in and the Succession court will play its part.

In the premises it is my holding and finding that the Applicants lack the locus standi to be enjoined in this suit. I disallow the application for joinder but make no order for costs.

Ruling dated, signed and delivered this **30<sup>th</sup>** day of **September** 2014.

**J. M. MUTUNGI**

**JUDGE**

**In presence of:**

Mr. Anzala for Mrs. Ligunya..... For the Plaintiff

N/S..... For the Defendant

Ms Wachira..... For the Interested party