



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

**CIVIL APPEAL NUMBER 11 OF 2010**

**ELIZABETH NJERI NDERI**

**SARAH WANGITHI MWANGI**

**SUING AS LEGAL REPRESENTATIVES OF THE**

**ESTATE OF PETER NDERI KINYUA (DECEASED). ..... APPELLANTS**

**VERSUS**

**HIGHWAY CARRIERS LIMITED. .... RESPONDENTS**

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

This appeal arises from a ruling made by the lower court under the Workmen’s Compensation Act Cap 236 of the Laws of Kenya (now repealed). The learned Trial Magistrate was to make a ruling as to whether or not the Applicants thereto were the children and wife of the deceased and accordingly dependants of the deceased Peter Nderi Kinyua and would therefore, be entitled to compensation under the above cited law.

In the ruling, the Learned Magistrate found that no adequate evidence had been tendered to enable the court come to the conclusion that the Applicants therein were dependants. He found that no birth certificates of the children/Applicants or any other certificates, were tendered in evidence. On that basis he ruled that there was a lack of evidence for court to conclude that the Applicants were wife and children. The ruling aggrieved the Appellants who filed this appeal.

I have carefully perused and considered the grounds of appeal and the evidence before the lower court. I observe that the Appellants had proceeded by way affidavit evidence. The affidavits of support and other similar affidavits, including supplementary affidavits filed by the Appellants in the lower court deponed that the Applicants were such dependants because they had annexed a Petition of the Grant of Letters of Administration ad litem. In this court’s view, the lower court rightly found that the petition for the grant of letters of Administration was no proof of the matters it alleged. Nor did the Grant of Letters of Administration ad litem prove that the contents of the Petition were true. It was necessary for the Petitioner(s) to prosecute the petition during which proceedings she/they would produce evidence to prove that the Petitioners were either wife and/or children of the deceased. They would need to produce evidence such as birth or marriage certificates. This was not done, leaving the facts deponed in the affidavits to be mere allegations.

In the above circumstances, the conclusions reached by the trial magistrate cannot be easily faulted. The appeal accordingly has no merit. It is dismissed with costs. Orders accordingly.

Dated and delivered at Nairobi this 24th day of September, 2014.

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**D A ONYANCHA**

**JUDGE**

