



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**SUCCESSION CAUSE NO. 140 OF 2013**  
**IN THE MATTER OF THE ESTATE OF:**  
**GICHANGA NGUMI..... DECEASED**  
**AND**  
**FELISHINA WAMUYU..... PETITIONER/APPLICANT**  
**VERSUS**  
**JAMES MUTHAMI GICHANGA**  
**GRACE WAMBUI GICHANGA ..... OBJECTORS**  
**RULING**

1. By an application dated 8th February 2013, the petitioner FELISHINA WAMUYU applied that GRACE WAMBUI GICHANGA and JAMES MUTHAMI GICHANGA be issued with Letters of Administration Ad Litem of the Estate of late GICHANGA NGUMI deceased.
2. The application was premised on the ground that the applicant was a defendant in Nyeri High Court Civil Case No.172 of 1979 (O.S) wherein the deceased was the plaintiff and that the family of the deceased had failed/refused and or neglected to take out letters of administration and as such the said suit was likely to abate before substitution.
3. In response to the said application, JAMES MUTHAMI GICHANGA swore an affidavit in which he deponed that no party can be forced to apply for letters of administration and that the suit which the petitioner sought to have substituted in was concluded over 30 years ago and therefore the petition was an abuse of the court process.
4. Submissions
5. On behalf of the applicant, it was submitted that under Schedule V Article 14, 15 and 16 of P & A Rules, the court may issue letters to such an unwilling next of kin for the end of justice. It was submitted that Rule 14 specifically provided for the same in the following terms:-
  1. **“14 “When it is necessary that the representative of a deceased person be made a party to a pending suit and executors or persons entitled is unable or unwilling to act, letters of administration may be granted to the nominee of a party in the suit limited for the purposes of representing the deceased therein or in any other case between the parties or any other parties touching on the matter at issue in the cause or suit and until a final decree shall be made therein and carried into complete execution.”**
  - 2.
6. On behalf of the respondent it was submitted that Rule 36 of P&A Rules provides for application for limited grant and colligenda whose main purposes is to collect and preserve the estate pending the making of full grant which as not the case in the present application. It was further submitted

