



REPUBLIC OF KENYA

High Court at Kakamega

Judicial Review 63 of 2011

**IN THE MATTER OF APPLICATION BY EVANS A. AJNGA TO APPLY FO JUDICIAL
REVIEW**

AND

IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO.18 OF 1990

AND ON THE MATTER OF HAMISI LAND DISPUTES TRIABUNAL CLAIM NO.34 OF 2011

AND

IN THE MATTER OF HAMISI SRM COURT MISC. AWARD NO.14 OF 2011

BETWEEN

REPUBLIC APPLICANT

AND

SIMON JUMBA BAINA 1ST RESPONDENT

ESINAS KHADI AJANGA 2ND RESPONDENT

GRACE N. AJANGA 3RD RESPONDENT

HAMISI DISTRICT LAND DISPUTES TRIBUNAL..... 4TH RESPONDENT

AND

EVANS ALIVITSA AJANGA EXPARTE APPLICANT

RULING

The applicant filed his application dated 5th June 2012 seeking to be accepted as the legal representative of the ex-parte applicant herein and therefore be enjoined in these proceedings. The application is supported by his affidavit. Mr. Musiega, counsel for the applicant submitted that the responsibility as to who should be a legal representative rests with the court. The suit is a Judicial Review Application and the applicant could as well apply to be enjoined in the main application as he will be affected by the outcome.

Mr. Getanda, counsel for the 1st respondent opposed the application. Counsel submitted that the applicant would like to be substitute in place of the deceased ex-parte applicant without obtaining letters of administration. The applicant is not a legal representative of the deceased.

In his supporting affidavit, the applicant avers that the ex-parte applicant for the main application seeking orders of certiorari was his father. He annexed a letter dated **24.5.2012** from the Chebara sub-location Assistant Chief indicating that the ex-parte applicant died on 11.02.2012. The applicant maintains that he is desirous of being substituted in place of the late Evans Alivitsa Ajanga.

The normal procedure where a party to a suit passes on is that anyone interested to take over the proceedings has to approach the court as a legal representative of the deceased. This can only be done if the applicant obtains a grant of letters of administration or even a grant limited to the pursuing of the specific suit. To allow each person to approach the court and seek to be enjoined merely because he is a son or daughter of the deceased is un-procedural. How many sons did the deceased have and what if the other sons would like to be enjoined in this suit. What about the widow or daughters of the deceased.

It is only proper that an applicant seeking to inherit a suit obtains a limited grant or even a full grant of letters of administration. That will enable the applicant to have locus standi in the suit otherwise biological relationship with a litigant is not a ticket to walk into court proceedings.

The applicant herein does not have a grant of letters of administration and is therefore not a legal representative of the deceased. The court can only recognize him if he first obtains a grant of letters of administration either intestate or otherwise. The deceased did not appoint him as his administrator.

In the end, I do find that the application dated 5th June 2012 lacks merit and the same is dismissed with cost.

Delivered, dated and signed at Kakamega this 7th day of February, 2013

SAID J. CHITEMBWE
J U D G E