



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**SUCCESSION CAUSE NO. 168 OF 2011**

IN THE MATTER OF ESTATE OF GRACE RUNJI KIANDE..... DECEASED

AND

JANE RWAMBA MWANIKI .....PETITIONER/APPLICANT

VERSUS

NDWIGA MUTHARA ..... 1<sup>ST</sup>  
RESPONDENT

PETER NJERU MUGO ..... 2<sup>ND</sup>  
RESPONDENT

**R U L I N G**

The Petitioner herein filed this Petition for letters of administration to the estate of the deceased Grace Runji Kiande in her capacity as a daughter of the deceased. This was on 13/5/2011. On 23<sup>rd</sup> September 2011 she filed an application under the law of Succession for restraining orders against the Respondents herein who she accused of intermeddling with the deceased's property viz; Ngandori/Kirigi/2628 which is now Ngandori/Kirigi/8987 and 8988. The Counsels agreed to dispose of the application by way of submissions and thereafter viva voce evidence. In between, the 2<sup>nd</sup> Respondent who acts for himself and the 1<sup>st</sup> Respondent filed a Preliminary Objection last year which was only heard two weeks ago.

The Preliminary Objection is about the *Locus Standi* of the Petitioner in filing this application. Mr. Mugo for the Respondents relying on the case of **GITAU & 2 OTHERS –V- WANDAI & 5 OTHERS** submitted that since the application was filed before the issuance of the grant it was a nullity. Mr. Mungai for the Petitioner/Applicant responded saying a Preliminary Objection is on matters of law only but the Respondents were leading evidence. It is true that the Petitioner does not have letters of grant of administration or a limited grant ad litem. She is however a Petitioner in this Succession Cause. Is she by law barred from rising against any intermeddling in the estate of the deceased in the same Succession Cause? In the **GITAU's** case (supra) the Plaintiffs who were administrators of the estate of one **Daniel Gitau Mute** filed a suit seeking to nullify proceedings in a previous suit in which the Defendants purported to sell a piece of land which they held in common shares with the deceased. The same was dismissed as they had not obtained grant. As in several other cases like;

1. **PETER MAUNDU MUA –V- LEONARD MULINGA & ANOTHER MACHAKOS HIGH COURT CIVIL CASE NO.305/95**
2. **JOHN KASYOKI KIETI –V- TABITHA NZIVULU KIETI & ANOTHER MACHAKOS H.C.C.**

**NO.95/01**

- 3. VIRGINIA EDITH WAMBUI OTIENO –V- JOASH ONGO & ANOTHER [1982 – 88]1 KAR 1048**
- 4. TROUSTIK UNION INTERNATIONAL & ANOTER –V- JANE MBEYU & ANOTHER NAIROBI CIVIL APPEAL NO.145/91**

the position is that a party is not entitled to bring an action as administrator before he/she taken out letters of administration. If he does, so, the action is incompetent at the date of inception.

In the present case the Petitioner has filed a petition for grant of letters of administration. The property in this estate is a parcel of land which was in the deceased's name as at 1988 when she died. The records herein show that the title is no longer in the deceased's name. In the course of these succession proceedings, before confirmation of any grant the Court must be satisfied that this property is in the name of the deceased. This determination of the true ownership can only be done through a suit. And such suit can only be filed by a person who has a grant of administration or limited grant ad litem. A grant vests a deceased person's property in the executor or administrator. Without a grant there is no vesting.

The Applicant's application is on intermeddling of the deceased's property which has yet to be vested in her as she does not have a grant. The matter is even complicated more because the title of the property complained of is in the names of other persons. Hence the issue of ownership must be sorted out first. And this can only be raised by a person who has letters of grant. The issue of *locus standi* was properly raised. The Petitioner/Applicant lacked *locus standi* to file the application dated 23/9/2011. I uphold the Preliminary Objection raised and strike out the said application.

Costs in cause.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2013.**

**H.I. ONG'UDI**

**J U D G E**

In the presence of;

M/s Njeru for Mr. P.N. Mugo for Respondents

Applicant

2<sup>nd</sup> Respondent

Njue – C/c