



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CIVIL CASE NO. 26 OF 1997

JUSTA WAWIRA KIURA

(Suing as the Administratrix of

The estate of Fredrick Kiura Nyaga).....PLAINTIFF/APPLICANT

VERSUS

NJUE GAKOROMO..... 1ST RESPONDENT

NGIMA GAKOROMO 2ND
RESPONDENT

J.M. MUNGUTI 3RD
RESPONDENT

ANGELO GICHOVI GAKOROMO 4TH
RESPONDENT

JOSEPH MUCHIRA KIURA 5TH
RESPONDENT

EPHANTUS STANLE NJAGI 6TH
RESPONDENT

RULING

The intending interested party brought this Notice of Motion dated 16/9/2013 under Order 1 rule 1 and 10 Civil Procedure Rules seeking an order to have her enjoined as a Respondent/Interested Party. The main ground is that she is the widow of the Plaintiff (now deceased). The legal representative of the deceased for purposes of this matter is JUSTA WAWIRA KIURA. She states in her supporting affidavit that the Plaintiff's legal representative is using the limited grant ad litem issued on 20/9/2013 to evict her and her children. The Respondents were not opposed to this application. Mr. Kathungu field grounds of opposition dated 30/9/2013. Parties agreed to file written submissions. Only Mr. Kinyanjui filed submissions on behalf of the Plaintiff. He submitted that the application was properly before the Court and had been brought under the wrong provisions of the law. And that she has no *locus standi* to file the application.

The facts of this case are that the original Plaintiff filed this CIVIL SUIT seeking to be declared owner of two (2) acres out of land No. NGANDORI/KIRIGI/1699. The Judgment was in his favour. The same was delivered on 4/10/2011. The said Plaintiff unfortunately died on 26/6/2010. His daughter Justa Wawira obtained Limited Letters of grant ad litem on 20/9/2012 for purposes of pursuing this matter only. As at that time of obtaining the limited grant there was already a Judgment on record and a decree drawn. The Applicant now wants to be enjoined as an interested party because she is the widow of the deceased Plaintiff and also has children.

I have considered the application plus the affidavit, grounds of opposition plus the submissions of the Plaintiff's Counsel. The record confirms that this is a finalized matter pending execution. Secondly this is a civil case which determined the share of the deceased Plaintiff in the land registered in the names of the Defendants/Respondents. The case is not about the estate of the deceased person whereby the Court has to determine who the Dependants are and their respective shares. That bit is for the Court that will be dealing with succession of the deceased's estate. It is therefore important that the two issues be kept separate.

The limited grant ad litem issued to Justa Wawira is only meant to enable her execute the decree of the Judgment herein. She cannot use it to distribute the 2 acres. The said 2 acres remain an asset of the deceased (Plaintiff's) estate which has to be distributed under the Law of Succession Act. The Applicant should therefore pursue her interests and/or if any in the Court that will be dealing with the Succession Cause in respect of the deceased's estate.

I therefore find no merit in the application dated 16th September 2013. It is dismissed with costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 24TH DAY OF DECEMBER 2013.

H.I. ONG'UDI

J U D G E

In the presence of:-

Mr. Ken Githinji for Kinyanjui for the Plaintiff

Njue CC