



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

CIVIL NO. 64 OF 2007

WILLIAM OLE NABALA..... PLAINTIFF

VERSUS

ATTORNEY GENERAL & 5 OTHERS.....DEFENDANT

RULING

1. The 3rd defendant's application filed on 21-3-2011 has been considered alongside the respective submissions of the parties.
2. The application does not raise a mere technicality as submitted by counsel for the plaintiff. Rather it challenges the plaintiff's capacity on 16-1-2001 to bring this suit on behalf of the estate of Juma Omari Abdalla.
3. It is common ground that the plaintiff in so doing acted pursuant to the grant of letters of administration issued to him in 1998, which this court revoked on 15-12-10. The plaintiff was however issued with fresh letters of administration on 19-5-2011, before the present applications could be disposed of.
4. On the basis of the legal authorities cited by the 3rd defendant's counsel, there cannot be any argument that only a party who holds a grant of letters of administration of the estate of a deceased can commence litigation on behalf of that estate.
5. The difficulty I see in outrightly allowing the 3rd defendant's application is three fold:
 1. The plaintiff's position has now been regularized by the issue of fresh letters to him.
 2. The plaintiff did have letters of administrations at the time he filed the suit but which were later revoked.
 3. Costs have been incurred in the suit, which commenced in 2001.
6. I have therefore agonized over the best course to take, in the interest of justice. Although I do not agree with some of the arguments of the plaintiff's counsel, that the issue before us is one of technicality, I think the words of Appaloo JA in **WACHIRA VS NDANJERU (1982-88) I KLR 1062** speak into the present situation. The honourable judge of appeal emphasized the need for courts to "strive to do substantial justice to the parties."
7. **Section 1B (1)** of the Civil Procedure Act imposes a specific duty on the court "for the purpose of

furthering the overriding objective specified in S1A”. Hence the court is enjoined to:

“handle all matters presented before it for the purpose of attaining the following aims:

- a. The just determination of proceedings
- b. The efficient disposal of the business of the court.
- c. The efficient use of the available judicial and administrative resources.
- d. The timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the respective parties...”

8. Considering the present application with those aims in mind, I think they militate against the grant of the orders sought by the 3rd defendant. More so because it has not been demonstrated that the 3rd defendant will suffer or has suffered any prejudice through the initial commencement of this suit, save that which can eventually be compensated through costs.

9. In my considered view, this case has been delayed for too long and ought to be heard expeditiously, as it is, rather than restarting the entire process.

10. For these reasons I decline to grant the application by the 3rd defendant. The plaintiff having regularized his capacity, this court now deems the suit as properly filed.

11. Costs will be in the cause.

12. The parties are directed to set down the suit for hearing without further delay.

Delivered and signed on this 23rd day of **February, 2012** at Malindi in the absence of the parties.

C. W. Meoli
JUDGE