



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

SUCCESSION CAUSE NO. 547 OF 2011

**IN THE MATTER OF THE ESTATE OF RICHARD NDERI
WANG’OMBE.....DECEASED**

AND

**SILVESTER WANGOMBE NDERI
ANDREW GICHOHI NDERI
ELIZABETH WAMBUI NDERI**

.....APPLICANTS

SEBASTIAN WACHIRA NDIRANGU

RULING

Pursuant to the provisions of *Section 54* of the Law of Succession Act and *rules 49* and *73* of the Probate and Administration Rules, Silvester Wang’ombe Nderi, Andrew Gichohi Nderi, Elizabeth Wambui Nderi and Sebastian Wachira Ndirangu, hereinafter referred to as the “applicants”, petitioned this court to grant them special limited letters of administration of the Estate of Senior Chief Nderi Wang’ombe, deceased. The deceased is said to have passed away on 22nd October 1952. The applicants urged this court to grant them the letters to enable them pursue **Nyeri H.C.C.C. 181 of 2010 – Silvester Wang’ombe Nderi 7 4 others =Vs= Hon. Attorney General.**

I have considered the grounds set out on the face of the petition and the facts deponed in the affidavit of Silvester Wang’ombe Nderi. The Applicants aver that they have filed the petition in their capacities as trustees and beneficiaries of the Estate of senior Chief Nderi, Wang’ombe, deceased. There is no doubt that the deceased passed away in 1952. It would appear the applicable succession law to the deceased’ Estate was the Kikuyu customary law. The Law of Succession Act, came into effect on 1st July 1981. Under *Section 2(2)* of the aforesaid Act, it is expressly provided as follows:

“2(2) The Estates of persons dying before the commencement of this Act are subject to the written laws and customs applying at the date of death, but nevertheless the administration of their Estates shall commence or proceed so far as possible in accordance with this Act.”

The above provision brings out two aspects namely: (i) “the Estate” and (ii) “the administration”.

The word “**Estate**” is defined by the **Black’s law Dictionary** as: **The amount, degree, nature and quality of a person’s interest in land or other property.** It would appear under *Section 2(2)*, the Estate of Senior Chief Nderi Wang’ombe, deceased is subject to the written law and customs applicable before 1st July 1981. However, the same section states that `the administration of the deceased’s Estate shall

commence or proceed so far as possible in accordance with the Law of Succession Act. '**Administration**' is defined under the **Black's Law Dictionary as: the Management and Settlement of the Estate of an intestate**. The Applicants are before this court seeking to be given special limited letters of administration to enable them prosecute a suit they had already filed. This court is aware that the administration of an Estate involves realizing the movable assets and paying out of them any debts and other claims against the Estate. It also involves the division and distribution of the net Estate. It would appear the Applicants are specifically seeking to be given the mandate to prosecute the case in their capacities as trustees and beneficiaries. After a careful consideration of the application, I have come to the conclusion that the same should not be given for three reasons: First, I am not convinced that the Law of Succession Act applies to the Estate of the late Senior Chief Nderi Wang'ombe. The deceased died many years before the inception of the Law of Succession Act. Secondly, that even if the provisions of the Law of succession Act applied, the Applicants have not brought the relevant application. They cited the provisions of *Section 54* of the Law of succession Act and *Rules 49 and 73* of the Probate and Administration rules. They have applied for issuance of a special limited grant. I think the relevant application in the circumstances should have been a grant of letters of administration *ad litem* under paragraphs 14 and 15 of the Fifth Schedule. Thirdly, the Applicants' main concern is to have the grant to prosecute **Nyeri H.C.C.C. No. 181 of 2010**, a suit they filed before obtaining the grant. In my view, it would appear the Applicants want to use this court to cure a mischief which has already taken place. This Court cannot sanction an illegality which has taken place. It is a requirement in law that before one institutes a suit on behalf of an Estate that person must first obtain a grant of letters of administration. In **Troustik Union International & Another =Vs= Mrs Jane Mbeyu & Another C.A. NO. 145 of 1991** the Court of Appeal held *inter alia* that an administrator is not entitled to bring an action as administrator before he has taken out letters of administration. I am afraid this may have been the case in **Nyeri H.C.C.C. No. 181 of 2010**.

In the end and on the basis of the above reasons, I dismiss the Petition dated 31st May 2010 with costs being in the cause.

Dated and delivered at Nyeri this 30th day of June 2011.

**J. K. SERGON
JUDGE**

In open court in the presence of Nderitu for the Applicant.