



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA**

Civil Appeal 18 of 2004

(Appeal arising from BGM CM CC No.424 of 2000)

YOHANA OMUMIA **APPELLANT**
(Suing on behalf of the Estate of PIUS WERE ABONYO)

~VRS~

MUMIAS SUGAR COMPANY LIMITED **DEFENDANT**

Plaintiff prayed for damages for loss of dependency under the Fatal Accidents Act and for loss of expectation of life under the Law Reform Act and also special damages. In its submissions the Defendant strongly contested the issue of loss of dependency which it argued was not proved. The issue of *locus standi* was also raised that the Appellant ought to have obtained a full grant and not *al colligenda bona*. The magistrate relied on authorities presented by the Defendants on the two issues and dismiss the claim for damages under both the Fatal Accidents Act and the Law Reform Act.

This court was referred to the same decisions by the Respondent. In the case of the **ESTATE OF KAHAWA SUKARI LTD AND THE MATTER OF THE COMPANIES ACT, WINDING UP CAUSE NO.23 OF 2002 MILIMANI COMMERCIAL COURT**, Justus Aaron Ringera held that the grant of administration *ad colligenda bona* did not confer on the grantee the status of a personal representative of the deceased. In this cause, the grantee sought to be admitted as a member of the company under section 28 of the Company's Act in place of her deceased husband. The claim failed on the premise that she had no *locus standi*.

In the case of **EAST AFRICAN SEAL LTD –VRS- JOEL MUGA KISII HIGH COURT CIVIL APPEAL NO.175 OF 2004**, it was held by Lady Justice J. Gacheche in an appeal with similar facts with the one before me, that a grant of administration *ad colligenda bona* did not confer upon the grantee the *locus standi* to pursue a claim of damages. The appeal was allowed and the judgment of the lower court set a side.

I note that the Appellant had been served with the Respondent's submissions in the lower court but did not reply to them. The magistrate observed this omission and thought that it was a serious one given the serious nature of the matter to the Appellant. The Appellant did not refer this court to any decision to support their argument that where a grant of administration *ad colligenda bona* indicates that it is for the sole purpose of filing a suit, the same is sufficient to establish locus. I would not find such a contention plausible in that the purpose of a grant under section 67 (1) of the Succession Act is to;

“collect, get and receive the estate and do such As may be necessary for the preservation of the same until further representation is granted.”

Such a grant would not entitle the grantee *locus standi* or a benefit on the estate of the deceased.

The claim under the Law Reform is dependent on whether the Appellant obtained letters of administration. Even though liability was agreed on, the Appellant had to satisfy this legal requirement. It follows that damages under the Act were not awardable.

The two decisions are relevant to this appeal and I agree with the Respondent herein that the magistrate was right in his finding that the Appellant had no *locus standi* to bring the suit.

On the issue of loss of dependency, the deceased was aged 65 years at the time of his death. The Appellant testified that he and his brother depended on the deceased and shared his monthly income of Ksh.6000/= begotten from tilling the land. The Respondent argued that the deceased would have been the one dependent on his sons who were young and energetic to work and earn a living. The land was still available after the death of deceased for his sons to till and benefit like the deceased used to do. To this extent, I agree with the Respondent. The Appellant did not adduce evidence to convince the court that he and his brother were dependent on the deceased. He did not call his brother to testify. It is my finding that the magistrate made a correct finding that loss of dependency was not proved to the standards required. The claim for this head of damages was rightly dismissed by the magistrate.

Having evaluated the evidence and made my own findings, I find that the appeal has no merit and I dismiss it accordingly. Each party will meet its own costs of this appeal.

F. N. MUCHEMI
JUDGE

Judgment dated and delivered on the 6th day of July, 2010 in the presence of Mr. Abok for the Appellant.

F. N. MUCHEMI
JUDGE