



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
MISC. CIVIL APPLICATION NO. 74 OF 2000

JACKSON MBOGO.....
.....APPLICANT
VERSUS
JOSEPH KAMAU KIGUOYA.....
.....RESPONDENT

R U L I N G

The Application before me is the one dated 24.06.09. It is brought under Section 82 and 83 of Cap 160 and Rules 49 and 73 of the Probate and Administration Rules.

I can say at this early stage that the same is premised on the wrong provisions of the law, Section 82 and 83 of the law of Succession Act relates to the powers and duties of personal representatives. They do not confer locus on one Joseph Kamau Kiguoya to file the application in question.

Indeed, I have confirmed with the certificate of confirmation annexed to the application that the applicant is neither an administrator and nor is he one of the listed beneficiaries. That fact alone deprives him of the necessary *locus standi* to file the said application. The Application has no basis in law as Mr. Mogusu rightly submitted and it should be dismissed. That notwithstanding, I would like to observe that the application is made on the basis that 2 of the administratrix have died. It is incumbent on the surviving administratrix to file an application for substitution.

I agree with Mr. Mogusu for the respondent (who is also wrongly sued) that the Executive officer cannot substitute the administrators who are deceased.

Having considered the Application along with the rival affidavits and counsel's oral submissions in court, I find that this application is bad in law and the same has no merit whatsoever. It is hereby dismissed with costs to Jackson Mbogo who is named as the Respondent.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 25th day of November 2010

In presence of:- All parties.