

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

SUCCESSION CAUSE 93 OF 1999

AGUSTINO MUTHURI M'IBUURI APPLICANT

VERSUS

PETER KIRIMI M'IBUURI RESPONDENT

RULING

On 16th November 2007 this court dismissed an application by the applicant in which he sought to be substituted in this cause in place of the petitioner who is now deceased. The application failed on one ground, namely that the applicant had not been appointed a legal/personal representative of the deceased.

Taking the cue from this ruling the applicant has now applied in this cause for a limited grant in a petition filed on 22nd February 2008. The application was opposed and since counsel for the objector did not file a replying affidavit or grounds of opposition she stated from the bar that it was irregular to file this application in the main cause. That it ought to have been filed in a miscellaneous file and brought pursuant to sections 63 and 64 of the Law of Succession Act.

I have considered these arguments and wish to observe right away that sections 63 and 64 of the Law of Succession Act have no application in the present application. The application is expressed to be brought under section 67(1) of the Law of Succession Act and Rule 36(1) (2) (I suppose) of the Probate and Administration Rules which allow for the grant of letters of administration limited for specific purpose.

The practice has been to file a miscellaneous application separate from the main cause or suit. That practice will strictly be followed where the main suit is not a succession cause.

In the exercise of my discretion under Rule 73 of the Probate and Administration Rules, I will allow the application as there will be no prejudice to the objector. A grant limited to the applicant being substituted in place of the deceased petitioner in this cause is granted. Costs in the cause.

Dated and delivered at Meru this 3rd day of October 2008.

W. OUKO

JUDGE