



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

**Succession Cause 4 of 2007**

**IN THE MATTER OF THE ESTATE OF CHARO KAVIHA MWERI....DECEASED**

**AND**

**KADII CHARO KAVIHA .....PETITIONER**

**RULING**

By a Chamber Summons application dated 23<sup>rd</sup> November 2007, pursuant to the provisions of Sections 47, 54 and Rule 73 of the Law of Succession Act, the applicant seeks Orders:

1. The Honourable Court be pleased to grant and issue to the Applicant/Petitioner letters of administration only limited to the purposes of pursuing the Land Dispute Tribunal Case No. 71/9/2004 between CHARO KAVIHA MWERI VS JOHN G. KAMAU
2. Cost of this application be in the cause.

The application is supported by the affidavit of Kadii Kaviha Mweri sworn on the 23<sup>rd</sup> day of November 2007. The applicant relied on the evidence of the said affidavit, grounds of application and counsel's speeches.

On behalf of the applicant, it was argued that she is the lawful wife. That the deceased estate is being intermeddled with and is further being rendered wastage. In order to preserve the estate, it has been necessary to seek limited grant of letters of administration for purposes of pursuing the claim filed by her late husband being Land Disputes Tribunal Case NO. 71/9/2004 CHARO KAVIHA MWERI –VS- JOHN G. KAMAU. That without the grant she will not have the requisite *locus-standi* to pursue the preservation of the estate.

In this case a suit is already in place. The applicant merely requires the *locus standi* to continue with the same. The applicant's husband died on 23<sup>rd</sup> February 2006 as per exhibit "KKM 1" This application was filed on 23<sup>rd</sup> November 2007.

In my considered view there is absolutely no reason why the applicant should not have applied for full grant. There has been sufficient time for doing so.

In any event Section 46 of the Law of Succession Act (Cap 160) vests authority on public officers to take steps mentioned in Section 46 if no application for representation of the estate have been made within one

month. In this case no representation was made within one month and hence it lay squarely at the door of the public officers named in section 46 of the Act to preserve the estate. The public officer should then have taken steps to report to the Public Trustee. The Public Trustee should have upon receipt of the report taken up the matter which includes making the application for grant of letters of administration (**see OMBOGO –VS- STANDARD CHARTERED BANK OF KENYA LTD (2000)2 E.A 481.**

The Public Trustee in applying for grant under Section 6 of the Public Trustee Act, may take possession of the estate and administer it without having to make an application to the court. (See Section 8(1) of the Public Trustee Act).

For those reasons, the application is dismissed with no orders as to costs. The applicant is at liberty to make an application for full grant.

DATED and delivered at Malindi this 16<sup>th</sup> day of April 2007.

**N. R. O. Ombija**

**JUDGE**