

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA

Civil Case 19 of 2000

OMARI KABURU.....PLAINTIFF

VS

INDUSTRIAL AND COMMERCIAL DEVELOPMENT CORPORATION.....DEFENDANT

RULING

This is the Ruling in respect of the Preliminary Objection dated 12.7.2005. In the Preliminary Objection, Mr. Mulwa appearing for the defendant/respondent urges the court to dismiss the application dated 29.5.2005 for several reasons. He has raised 6 points but withdrew the 1st point following the plaintiff's counsel withdrawal of the application dated 12.2.2000. I have considered the issues raised in the Preliminary Objection and considered what both counsel submitted in court. For me, the law is very clear in respect of who has *locus standi* to sue on behalf of the estate of a deceased person. I wish to state from the outset that the '*Power of Attorney*' which purportedly gave the plaintiff herein the locus to file this suit and dated 31.5.2000 was donated to him before the filing of this suit. I do not wish to go into the details as to whether the same authorized him to file the said suit or not reason being that the Preliminary Objection I am dealing with is in respect of the application dated 29.03.2005 and not against the entire suit.

That is a point that can be argued out another time. As at now, I will concentrate on the application dated 29.3.2005. Is the same properly before the court? I must agree with counsel for the respondent that the Power of Attorney was extinguished upon the death of the person who had donated the same to the plaintiff herein. In the absence of the Power of Attorney, the plaintiff/applicant needed to re-address the issue of his *locus standi* before proceeding with the matter. This I believe he did when he applied for and obtained the grant of letters of administration dated 22.9.2005. The law is that the Grant is what clothes a person with the *locus standi* to stand in and sue on behalf of the estate of the deceased. It becomes operational from the date of issue. It does not operate retrospectively, nor does it validate any acts done by the applicant prior to its issuance. In this case, the plaintiff/applicant could only file any pleadings after the death of the deceased from 22.9.2005 and not before. Between the extinguishing of the Power of Attorney i.e 22.4.2001 and the issuance of the Limited Grant i.e on 22.9.2005, the plaintiff/applicant could not lawfully file any pleadings in this matter or purport to represent the estate of the deceased. He simply had no legal capacity to do so. The Notice of Motion dated 29.3.2005 is therefore bad in law for the applicant's lack of legal capacity to file the same. For that one reason, I must uphold the preliminary objection and dismiss the application dated 29.3.2005 with costs to the respondent.

W. KARANJA

JUDGE

DELIVERED, Dated and signed at Bungoma this 10th day of July, 2007. In presence of Mr. Sichangi for applicant . NA for respondent.