

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Succession Cause 180 OF 2003

IN THE MATTER OF: PAUL ODERO OGUNA (DECEASED)

PETITION FOR LETTER OF ADMINISTRATION AD LITEM

R U L I N G

In a petition said to be sworn before a Commissioner for Oaths on 5th December 2006, Patrick Omondi Oguna hereinafter referred to as the Petitioner sought to be granted limited letters of administration over the Estate of Paul Odero Oguna, deceased. In an affidavit he swore on the same date he stated that he intended to sue on behalf of the deceased's estate to recover damages for injuries arising out of a road traffic accident in which the deceased perished.

When the petition came up for hearing before this court, Mr. Mkan learned advocate for the petitioner informed this court that the petition is filed pursuant to rules 7 and 12 of the Probate and Administration rules. He argued that the petitioner wanted to substitute the deceased in pursuing damages on behalf of the estate of Paul Odero Oguna.

I have considered the oral submissions made by the Petitioner's learned counsel. I have also perused the petition and the supporting affidavit. The petition itself is fatally defective in form and substance. The provision of the law in which it is brought under are not cited by the petitioner. The learned counsel did not help matters when he cited the wrong provisions of the law. If indeed the late Paul Odero Oguna was granted letters of administration on 11th September 2003, why is it that the Petitioner has not availed to this court the extent in which he acted on those letters. I am of the strong view that Mr. Mkan, the Petitioner's learned Counsel did not seriously attend to this matter. He took it for granted that this court would grant his client the prayers sought in the petition as a matter of course. This is not the position. In the end I strike out the petition for being incompetent and fatally defective with no order as to costs.

Dated and delivered at Mombasa this 13th day of December 2006.

J.K. SERGON

J U D G E

In open court in the absence of the parties.