

REPUBLIC OF KENYA.
IN THE HIGH COURT OF KENYA

AT KITALE.

MISC. CIV. APPLI. 25 OF 2005

REPUBLIC

D.C. WEST POKOT.....APPLICANT.

VERSUS

MINISTER OF LANDS, SETTLEMENT & HOUSING.....1ST RESPONDENT.

CHEPOTUTURWIT YARAITWA.....2ND RESPONDENT.

EXPARTE: JACOB PATIS REMOR.

R U L I N G.

The ex-parte applicant Jacob Patis Remor has brought this notice of motion under OLIII r.3 of the Civil Procedure Rules and section 8 & 9 of the Law Reform Act cap 26 of the laws of Kenya. He is seeking orders.

“That an order for certiorari do issue to remove into the Honourable court and quash the decision of the District Commissioner, West Pokot District, purportedly made on behalf of the minister for lands (Settlement) and Housing made on 30/11/2004 in an appeal to the Minister in respect of L/R 163 in Chepararia Adjudication section, Appeal case No. 357/1997.”

He is also asking that costs be provided for. At the hearing, counsel for the applicant withdrew grounds (a) and (b). His application is therefore premised on ground (c), (e) and (f). The same is further supported by the applicant’s affidavit and statement of particulars filed at the time of application for leave as required under OLIII. I have heard the application and noted the contents of these documents along with the annexures therein. Firstly, I note that the application was duly served on the Respondents. None of them filed any replying affidavit. Nor did they appear in court to oppose the said application. The same is therefore not opposed.

I have nonetheless seen the affidavit, statement of particulars and the annexures thereto. Grounds (c), (d) and (e) in my view lack substance and do not warrant the quashing of the decision in question. Ground (f) however raises a point of law, which is very pertinent in this matter. This ground states that the appellant who is the 2nd Respondent in this case did not have letters of administration in the ESTATE of YARAITA PEENA (deceased) and therefore she did not have the legal capacity to lodge and prosecute the appeal on behalf of the Estate of YARAITA PEENA.

I have noted from the annexed proceedings that the said YARAITA PEENA is actually the person who was a party in the objection, which was appealed from. He was the defendant. He is said to have died in 1994. That contention though not supported by any documentary evidence is not disputed. The appeal before the minister was filed in 1997. According to the applicant herein, the appellant Chepotuturwa Yaraita had not obtained a grant of letters of administration for the estate of her husband. That fact is also not disputed either. The law on this issue is very clear. A party gets locus standi to sue or be sued in respect of the estate of a deceased person only after being issued with a Grant of letters of administration in respect of that estate. This position is clearly enunciated in my decision in Misc. Civil Suit No. 40/2004 where I said.

“It is trite law that a person cannot sue on behalf of the estate of a deceased person unless he/she is the legal representative or administrator of that estate. This status or locus standi is obtained by a person filing a succession cause in court and being granted the letters of administration respect of the deceased’s estate.”

The 3rd Respondent who filed the said appeal had no capacity to do so. That decision is therefore a nullity. The D.C. had no jurisdiction to entertain the same. For that reason alone, I must allow this application. The same is therefore allowed and orders granted as prayed but with each party being ordered to bear its own costs. Orders accordingly.

WANJIRU KARANJA
JUDGE.

Delivered, dated and signed at Kitale this 6th day of June, 2005 in the presence of:- Mr. Mwangi Wahome for applicant. Ms. Arunga for Respondent.