



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

**Misc Succ Cause 100 of 2004**

**IN THE MATTER OF THE ESTATE OF MIRITI M'MUGA (DECEASED)**

**MARTIN MBABU MUGO ..... PETITIONER**

**RULING OF THE COURT**

The petitioner/applicant, Martin Mbaabu Mugo filed his petition for letters of Administration Intestate Limited to suit of the estate of the deceased under paragraph 14 of the fifth schedule of the Law of Succession Act, Cap 160 Laws of Kenya. The relevant paragraph provides as follows:-

**“14. When it is necessary that the representative of a deceased person be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in the suit, limited for the purpose of representing the deceased therein, or in any other cause or suit which may be commenced in the same or in any other court between the parties, or any other parties touching the matters at issue in the cause or suit, and until a final decree shall be made therein, and carried into complete execution.”**

The applicant has filed the application in his capacity as nominee of the appellant in HCCA No. 56 of 2001 and by reason of the fact that owing to the special circumstances of the cause, it is not possible to apply for and obtain a full grant to the person who is by law entitled to the grant. The applicant undertakes to faithfully administer according to law all the estate of the deceased.

The application is supported by affidavit of the applicant made and sworn on 2.8.2004 under the provisions of section 54 of the Law of Succession Act and Rule 12 of the Probate and Administration Rules. The applicant has annexed to the application a copy of the permit for burial in respect of one M'Miriti M'Muga. Contrary to what the applicant has averred at paragraphs 1 and 2 of the affidavit, he has not endorsed his name upon the petition and upon and permit for burial. The applicant has averred at paragraph 5 of the affidavit that he has been nominated by the appellant to apply for the grant of Letters of Administration upon refusal by the dependants and beneficiaries of the estate of the deceased Miriti M'Muga to do so despite being served with citation dated 17.3.2004. The applicant has further averred that HCCA No. 56 of 2001 involves the estate of the deceased's land parcel No. Mwimbi/Mirugi/648 as one of the subject matters of the appeal.

The issue for determination is whether the applicant is entitled to the orders sought. I have carefully considered all the facts placed before me by the applicant. I have also carefully considered submissions by learned counsel for the applicant. I have considered the law and especially the provisions of paragraph 14 of the 5th schedule (above). I am satisfied that justice demands that the grant of representation to the deceased's estate be made to the applicant so that the matters that are in court and to which the deceased was a party may be concluded. It is clear that those who are entitled to the administration of the deceased's estate are unwilling to do so having failed to respond to the citation served upon them on 20.3.2004.

In the result, the applicant's application for limited grant of letters of administration intestate is allowed. The same shall be issued in the name of Martin Mbabu Mugo. Costs shall be in the cause. It is so ordered.

Dated and delivered at Meru this 28th day of July 2005.

**RUTH N. SITATI**

**JUDGE**

**28.7.2005**