

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

SUCCESSION CAUSE NO. 63 OF 2004

**IN THE MATTER OF THE ESTATE OF MATINI MLANDA
CHANDO (DECEASED)**

ABIGAEL MUHUZANI APPLICANT

- Versus -

SIMON CHANDO

FLORENCE CHANDO

MARGARET CHAZI RESPONDENTS

R U L I N G

Abigael Muhuzani who says she is a widow of the late MATINI MLANDA CHANDO (the Deceased) has in this cause petitioned for a grant of letters of administration of the estate of the Deceased. Simultaneously with the filing of the petition she also filed an application under section 45 of the Law of Succession Act and Rule 73 of the Probate and Administration Rules seeking to restrain the Respondents their servants or agents from disposing off, taking possession or in any other way intermeddling with the estate of the deceased. She also seeks an order to restrain the Respondents from threatening, insulting or in any way interfering with the Petitioner's freedom of movement.

In the supporting affidavit she stated that since the death of the Deceased the Respondents have been going to her house and not only insulting her but also threatening to take away the properties belonging to the deceased.

The Respondents did not file any replying affidavit. Instead they, through their Advocates, filed grounds of opposition to the effect that the application is bad in law and that the Applicant has no locus standi as she has not obtained a grant of letters of administration. Mrs. Ngugi, counsel for the Respondents, submitted that the Respondents have not done or threatened to do any of the things they are accused of. She also stated that one of the Respondents Florence Chando is the widow of the Deceased who, although entitled to the properties of the Deceased has, however, not taken or threatened to take any property of the deceased.

Mrs. Ngugi further argued that anyone intermeddling with the estate of a deceased person commits a criminal offence under section 45 of the Law of Succession Act. If the Respondents had intermeddled with the estate of the Deceased in this case as it is alleged, then the matter should have been reported to the police for appropriate action.

As I have already stated the Respondents have not filed a replying affidavit. So the arguments by the Petitioner stand uncontroverted. That she has no locus standi does not hold in this particular application. Being a widow of the Deceased she is an interested party. According to her the Respondents are not only seeking to take away the Deceased's property but they are also threatening to throw her out of the matrimonial home. In respect of the assets of the deceased all she is seeking is the preservation of the estate.

For these reasons I allow the application in terms of paragraphs 2 and 3 thereof and further order that the Applicant shall also not take away the assets of the Deceased from the Deceased's home or in any way dispose of them until letters of administration are issued and authority is given to her to dispose of them. The estate of the Deceased should be preserved for distribution, at the right time, to the rightful heirs of the deceased. To avoid creating tension in the family. I make no order as to costs.

DATED this 31st day of March 2004.

D.K. Maraga

Ag. JUDGE