



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
SUCCESSION CAUSE NO. E1006 OF 2021
IN THE MATTER OF THE ESTATE OF STEPHEN KIMOTHO KARANJA (DECEASED)

RULING

1. Before this Court for determination is the Notice of Preliminary Objection dated **23rd September 2021** by which the Administrators objects to the Application filed by **SIMON MUTURI** (hereafter ‘the **Objector**’) dated **15th September 2021**. In his application of **15th September 2021** the Objector sought the following orders: -

“1. The making of a grant of representation to the estate of the above-named STEPHEN KIMOTHO KARANJA who died at mater Hospital on the 29th day of April 2021, as sought in the Petition of the Administrators herein namely:- ANNE WANJA WAWERU, REBECCA CLAIRE KARANJA and MICHAEL KARANJA KIMOTHO (hereinafter jointly and severally referred to as “the Administrators”) all of Post Office Box Number xxxxx – 00202 Nairobi filed in the Family Division Registry on the 25th day of May 2021 be and is hereby objected to.

2. Costs of this application be costs in the cause.”

2. In response to that Objection the Administrators filed this Preliminary Objection which is premised on the following grounds:-

- i. **The Objector’s application is misconceived, bad in law and is an abuse of the due process of this Honourable Court:**
- ii. **That the objectors has no *Locus Standi* to bring this application and the application is therefore incurably defective and ought to be dismissed with costs;**
- iii. **That the objection to making of grant does not disclose a legal right or interest in the estate vested in the objector.**

3. The Preliminary Objection was canvassed by way of written submissions. The Administrators filed the written submissions dated **7th October 2021** whilst the Objector relied on his submissions dated **12th October 2021**.

BACKGROUND

4. This Succession Cause relates to the estate of **STEPHEN KIMOTHO KARANJA** (hereinafter ‘the **Deceased**’) who passed away intestate on the **24th April 2021**.

5. Following the death of the Deceased his widow **ANN WANJA WAWERU**, daughter **REBECCA CLAIRE KARANJA** and son **MICHAEL KARANJA KIMOTHO** (hereinafter ‘the **Administrators**’) jointly applied for letters of Administration Intestate in respect of the estate of the Deceased. The Grant of letters of Administration was made to the Administrators on **17th August 2021**.

6. Thereafter on **15th September 2017** the Objector herein **SIMON MUTURI** who is a brother to the Deceased filed an objection to the making of a Grant.

7. The Administrators in response filed this Notice of Preliminary Objection effectively stating that the Objector lacked ‘*locus standi*’ in this Succession Cause.

ANALYSIS AND DETERMINATION

8. I have carefully considered the Notice of Preliminary Objection as well as the written submissions filed by both parties. The only question for determination is whether the Preliminary Objection has met the legal threshold required in law.

9. The definition of a Preliminary Objection was given in the case of **MUKISA BISCUIT MANUFACTURING CO. LTD – VS – WEST END DISTRIBUTORS LTD (969)** as follows:-

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

10. Therefore, Preliminary Objection may only be raised on a pure point of law. In **RE ESTATE OF JOSEPH MUTISO KITHOME** it was held that the issue of *locus standi* is a pure point of law that can be properly raised in a Succession Cause.

11. The main objection raised by the Administrators is that the Objector has no *locus standi* in this matter. *Locus Standi* is a Latin term, which literally means ‘**place of standing**’ and refers to the right of a particular party to bring an action a suit. **Blacks Law Dictionary 10th Edition at Paragraph 1084** defines the term ‘*Locus Standi*’ as follows:-

‘The right to bring an action or to be heard in a given forum.’

12. It is trite law that pleadings filed in court by persons with no *locus standi* are void *ab initio* and the court would have no jurisdiction in such actions. In **Ibrahim V Hassan & Charles Kimenyi Macharia, [2019] eKLR** the Court observed as follows:-

“Locus standi is basically the right to appear or be heard in court or other proceedings. That means if one alleges the lack of the same in certain court proceedings, he means that party cannot be heard, despite whether or not he has a case worth listening. The issue herein is whether the Applicant lacks the requisite locus standi to seek relief from the court to revoke the grant in question issued to the Respondent. In my view, issues as regards locus standi are critical preliminary issues which must be dealt with and settled before dwelling into other substantive issues”. (own emphasis)

13. It is not disputed that following the demise of the Deceased Grant of letters of Administration was made to Administrators. As the Widow and Children of the Deceased the Administrators are amongst the beneficiaries to the estate recognized under the Law of Succession Act and therefore had the right in law to apply for and obtain said letters of Administration.

14. The Objector is a ‘**brother**’ to the Deceased. He is neither a beneficiary nor a dependant of the Deceased and has no legal claim to the estate.

15. The Objector avers that he has filed the objection on behalf of the some of the Deceased beneficiaries who were left out in the original chiefs letter. Firstly, the application dated **15th September 2021** is termed an objection to Grant of letters of Administration Intestate. However, the application has been overtaken by events as letters of Administration were already issued to the Administrators on **17th August 2021** before the Objector filed his application.

16. Secondly, the Objector as not exhibited any authority granted to him by the persons he alleges to represent authorizing him to file the application on their behalf. The persons listed in **Paragraph 6** of the Supporting Affidavit dated **15th September 2021** include several adults. They are capable and have the capacity to file an action on their own behalf. They do not require the Objector to act on their behalf.

17. Thirdly, the Objector as the ‘**brother**’ of the Deceased can only be deemed a beneficiary of the estate if he is found to be a dependant within the meaning ascribed by **section 29** of the **Law of Succession Act**. The Objector has not claimed that he was ‘**dependant**’ on the Deceased prior to his death neither has he tendered any evidence to prove his dependency on the Deceased.

18. In **RE ESTATE OF ALFRED MUTUNE MUNYAO (Deceased) [2019] eKLR**, the Court held as follows:

“...9. A perusal of the pleadings indicates that the applicant has not been listed as a beneficiary of the estate of the deceased and his claim cannot be tried in a succession cause. Section 29 of the Law of Succession Act is to the effect that a brother of the deceased will only be considered a dependant if maintained by the deceased prior to his death and hence is entitled to the estate of the deceased. In the absence of evidence of maintenance, I am unable to find that the applicant is a beneficiary of the estate of the deceased. Merely stating that the deceased was his brother is not enough for the applicant to lay claim to the estate of the deceased without any proof that he was being maintained by the deceased as a dependant.

12. Looking at the applicant’s pleadings there is no evidence to link him to the estate of the deceased or anything to prove that he was a dependant of the deceased. He has not explained his interest in the properties of the deceased and as such he should not prevent the respondents from administering the estate of the deceased. The chief’s introductory letter dated 29.4.2014 has listed the respondents as dependants of the deceased. The applicant is not indicated as a dependant and as such he had the burden of establishing the same. The applicant has not satisfied me that he is a dependant of the deceased. However should he have any claim to ownership of the properties of the deceased then he is at liberty to proceed to lodge it at the Environment and Land Court. Entertaining the applicant in the proceeding herein will serve no useful purpose other than to convolute the matter. **The applicant has not satisfied this court that he merits the orders he is seeking as he lacks locus standi.**” (own emphasis)

19. The Objector has not established their legal interest in the estate of the Deceased. He is neither an Administrator, a beneficiary nor a dependant and he has not shown any proprietary interest in the Estate.

20. For the above reasons, I find that the Objector has no *locus standi* in this matter. Accordingly, the application dated **15th September 2021** is not tenable and is hereby struck out. If there any legal beneficiaries who wish to take issue with the Grant made to the Administrators they are at liberty to file a Protest in this Cause. Each party will bear its own costs.

DATED IN NAIROBI THIS 11TH DAY OF FEBRUARY 2022.

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MAUREEN A. ODERO

JUDGE