



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUNGOMA.

SUCCESSION CAUSE NO. 8 OF 2020.

IN THE MATTER OF ESTATE OF JAMES GEORGE MARUTI (DECEASED)

AND

LILIAN WAMUKOYA MARUTI.....PETITIONER

VERUS

FREDRICK KILALI MARUTI.....RESPONDENT

RULING.

This suit relates to the Estate of James Maruti who died on 23.2.2017.

James Maruti was the father of Paul Kilali Maruti (also deceased) who was the husband of Lilian Wamukoya Maruti the applicant. The Respondent Fredrick Kilali Maruti is the son of James Maruti. The Applicant is the daughter In-law of the deceased James Maruti, and sister In-law of the Respondent Fredrick Kilali Maruti.

The Applicant filed this Succession Cause by petitioning for letters of administration on 24.7.2020. She contemporaneously filed this application dated 21.7.2020 under certificate of urgency seeking the following orders;

1. THAT while pending the hearing and determination of the instant application, inter partes, this Honourable court be pleased to grant orders of temporary injunction restraining the Respondent, his servants, agents and or employees from howsoever, transferring, disposing, selling, sub-dividing or in any other manner intermeddling with any and all of properties of the James George Maruti (Deceased), including the following properties, namely, Kimilili/Kimilili/7009, 7010, 6636, 6637, 6638, 6639, 6640, 6641, and any other parcels of land arising from Kimilili/Kimilili/6119 and 6497, which were sub-divided into Kimilili/Kimilili /6443 and 6537, respectively among other numbers, to give rise to the ones already mentioned herein, all previously registered in the name of James George Maruti (Deceased) and subsequent Sub-divisions of the said parcels of land, and Kimilili Market Plot No. D2 and D4.

2. THAT while pending the Hearing and determination of the instant application, inter partes, the Land Registrar, Bungoma County, and the County Government of Bungoma respectively, be ordered to register and maintain a Prohibition order against all the properties of the James George Maruti (Deceased), including the following properties namely; Kimilili/Kimilili/7009, 7010, 6636, 6637, 6638, 6639, 6640, 6641, and any other parcels of land arising from Kimilili/Kimilili/6119 and 6497, which were sub-divided into Kimilili/Kimilili 6443 and 6537, respectively among other numbers to give rise to the ones already mentioned herein, all previously registered in the name of James George Maruti (Deceased) and subsequent sub-divisions of the said parcels of land, and Kimilili Market No. D2 and D4, of the said James George Maruti (Deceased), which arose after his death, as from 23.2.2017, prohibiting any further or other transactions of transfer, disposition, sale, sub-divisions, irrespective of whosoever entity's name such properties may have been registered or transferred or otherwise sold to, for purpose of preservation of the same from wastage or further disposition while pending the determination of the instant application and main Petition.

3. THAT while pending the hearing and determination of the instant application, interpartes, this Honourable court be pleased to grant orders of temporary injunction restraining the Respondent, his servants, agents and or employees from howsoever interfering with the Petitioner's quiet use, possession and enjoyment of the properties herself and her family, have separately, established their matrimonial home, and have been residing and carrying on hotel and restaurant business, during the lifetime of the deceased and after his death, both properties being registered in the name of the deceased as the proprietor.

4. THAT while pending the hearing and determination of the main Petition herein by way of distribution of the estate of the Deceased, this Honourable court be pleased to grant the orders of temporary injunction restraining the Respondent, his

servants, agents and or employees from howsoever, transferring, disposing, selling, sub-dividing or in any other manner intermeddling with any and all of properties, namely, Kimilili/Kimilili/7009, 7010, 6636, 6637, 6638, 6639, 6640, 6641, and any other parcels of land arising from Kimilili/Kimilili/6119, and 6497, which were sub-divided into Kimilili/Kimilili/6443 and 6537, respectively among other numbers, to give rise to the ones already mentioned herein, all previously registered in the name of the James George Maruti (Deceased) and subsequent sub-divisions of the said parcels of land, and Kimilili Market Plot No. D2 and D4.

The grounds for the application are that after the death of deceased, the Respondent and Sylvester Mahuyi Maruti before obtaining grant of letter of administration jointly unlawfully transferred to themselves the properties of the deceased and with the collusion of the Land Registrar Bungoma transferred to other 3rd parties. The Respondent has now again threatened to take away the property where the applicant resides namely Kimilili Market Plot No. D2. The applicant therefore prays for interim orders to stop the Respondent from intermeddling with the estate of the deceased and preserve the estate of the deceased.

Mr. Khaemba for the Respondent Fredrick Kilale Maruti gave a notice of Preliminary Objection seeking that the application be struck out for reasons that the Petitioner lacks the locus to institute this matter.

On 5.8.2020 this court gave direction that the Preliminary Objection be canvassed by way of written submission.

Mr. Khaemba for the Respondent submits that this being a matter relating to the estate of a deceased person, anyone who seeks to represent the estate must first obtain a grant of representation. He submits that that is a requirement of Section 45 of the Law of Succession Act. The Applicant has not tendered any grant or even a limited grant under Section 54 of the Act to enable her to file this application. Counsel submits that the applicant being a daughter In-law is not even a potential beneficiary of the estate of the deceased and therefore is not dependant within the meaning of Section 29 of the Succession Act as she is neither a wife, child or grandchild of the deceased who would be entitled to the estate of the deceased. Finally Counsel submits that the applicant having lacked locus, which is necessary to file the Succession cannot be granted the prayers sought.

Mr. Osewe for the applicant submitted that the applicant is a wife of the son of the deceased, and that her husband Paul Kilali Maruti is now deceased and she therefore takes his position in the beneficiaries of the estate on behalf of herself and grandchildren of the deceased James Maruti. He submits that the applicant has filed a Petition in respect of the estate as a dependant and therefore her locus springs directly from Section 29 of the law of succession Act, her being the wife of the son of the deceased. Counsel further submits that the application is aimed at preserving of the estate of the deceased from intermeddling by the Respondent and that as a beneficiary who has a legitimate interest in the Succession, she needs to take steps for protection on the free property of the estate.

From the pleadings and submissions. It is not in contention that the applicant/petitioner Lillian Mamukoya Maruti has not taken our any grant of letters or limited grant of letters of administration under Section 54 of the law of Succession Act to maintain this or present this application. Section 54 of the Law of Succession Act Provides;

A court may, according to the circumstances of each case, limit any grant of representation which it has jurisdiction to make, in any of the forms described in the Fifth Schedule to this Act.

Similarly, the 5th Schedule to the Law of Succession Act provides for grants limited for specific purposes. Paragraph 14 of the 5th Schedule empowers the court to issue a grant for the sole purpose of filing a suit. It reads:

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 party in such suit, limited for the purpose of representing the deceased in the said suit, 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 issue raised in the Preliminary Objection is that if the applicant has not obtained either the grant or limited grant does she have locus to file, maintain and prosecute this application? The term Locus Standi literally means a place of standing. It means a right to appear in court to file, prosecute, or appear or be heard in any proceedings. To say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings (See Alfred Njau & 5 Others –V- City Council of Nairobi 1983 eKLR]

How does a party acquire locus in a respect of an estate of the deceased? A party intending to deal with the property of the deceased can do so by obtaining (a) full grant to enable him take care of the entire administration of the estate or (b) a Limited grant which is limited to an execution of a specific purpose in relation to the estate. Section 54 of the Law of Succession Act provides for Limited grant Section 54 provides;

54. A court may according to the circumstances of each case limit any grant of the prosecution which it has jurisdiction to make in any of the forms described in the 5th Schedule to this Act.

1. Probate of copy or draft of lost will

When a will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident, and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of the copy or draft, limited until the original or a properly authenticated copy of it be produced.

2. Probate of copy where original exists

When a will is in the possession of a person residing out of Kenya, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

3. Administration until will produced

Where no will of a deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

Grants for the Use and Benefit of Others having Right

4. Administration with will annexed to attorney of absent executor

When any executor is absent from Kenya and there is no executor within Kenya willing to act, letters of administration with the will annexed may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

5. Administration with will annexed, to attorney of absent person, who if present would be entitled to administer

When any person to whom, if present, letters of administration, with the will annexed might be granted, is absent from Kenya, letters of administration, with the will annexed, may be granted to his attorney, limited as above-mentioned.

6. Administration to attorney of absent person entitled to administer in case of intestacy

When a person entitled to administration in case of intestacy is absent from Kenya, and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as before mentioned.

7. Administration during minority of sole executor or residuary legatee

When a minor is sole executor or sole residuary legatee, letters of administration, with the will annexed, may be granted to the legal guardian of the minor, or to such other person as the court shall think fit until the minor has attained full age, at which period, and not before, probate of the will shall be granted to him.

8. Administration during minority of several executors or residuary legatees

When there are two or more minor executors, and no executor who has attained majority, or two or more residuary legatees, and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained full age.

9. Administration for use and benefit of person of unsound mind

If a sole executor or a sole universal or residuary legatee or a person who would be solely entitled to the estate of the intestate according to the rules for the distribution of intestates estates, be a person of unsound mind, letters of administration, with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the court may think fit to appoint for the use and benefit of the person of unsound mind until he becomes of sound mind.

10. Administration pendente lite

Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the court may appoint an administrator of the estate of the deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing the estate, and the administrator shall be subject to the immediate control of the court and shall act under its direction.

Grants for Special Purposes

11. Probate limited to purpose specified in will

If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an attorney to take administration on his behalf, the letters of administration, with the will annexed, shall accordingly be limited.

12. Administration with will annexed limited to particular purpose

If an executor appointed generally gives an authority to an attorney to prove a will on his behalf, and the authority is limited

to a particular purpose, the letters of administration, with the will annexed, shall be limited accordingly.

13. Administration limited to property in which person has beneficial interest

Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to that property, may be granted to the person beneficially interested in the property, or to some other person on his behalf.

14. Administration limited to suit

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 such suit, limited for the purpose of representing the deceased in the said suit, 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.

15. Administration limited to purpose of becoming party to suit to be brought against administrator

If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the grant has been made is absent from Kenya, it shall be lawful for any court to grant to any person whom it may think fit, letters of administration, limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

16. Appointment of person not normally entitled to a grant

Where it appears to the court to be necessary or convenient to appoint some person to administer an estate or any part thereof other than the person who would in ordinary circumstances be entitled to a grant of representation, the court may, in its discretion and having regard to all the circumstances of the case, appoint such other person to be administrator and grant letters of administration, whether limited or otherwise, as it shall think fit.

Grants with Exception

17. Probate or administration with will annexed subject to exception

Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to that exception.

18. Administration with exception

Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to that exception.

Grants of the Rest

19. Probate or administration of rest

Whenever a grant, with exception, of probate, or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Grants of Effects Unadministered

20. Grant of effects unadministered

If the executor to whom probate has been granted has died, leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

21. Administration when limited grant expired and still some part of estate unadministered

When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Para 14 of the Schedule provides for granting of limited grant for the purpose of representation in any suit.

Sect. 67 of the Law of Succession Act and rule 36 of the Probate and Administration rules Provides for Limited grant of letters of

administration ad colligenda bona. Sec. 67(1) provides.

No grant of representation, other than a limited grant for collection and preservation of assets, shall be made until there has been published notice of the application for such grant, inviting objections thereto to be made known to the court within a specified period of not less than thirty days from the date of publication, and the period so specified has expired.

The limited grant of letters of Administration and Colligenda bona is for the purpose of dealing with the property of the deceased where the property is in danger of waste and need to be preserved in circumstances of urgency before the full grant is issued.

It is common ground that the applicant does not have any or the above limited grant of letter of administration. What then is the position of the applicant? In Rajesh Pranjivan Chandasame [2014] eKLR the court stated:

“It is common ground that at the time of institution of the said summons the respondent was not in possession of grant of letters of administration. The respondent acknowledges that he may have known of the existence of the will but according to time he doubted the validity of the will. In his view therefore the deceased died intestate. As far as he was concerned he moved to court by virtue of being a beneficiary for purposes of preserving the deceased’s estate. That may well be the case but in our view the position in law as regards locus standi in Succession matters is well settled. A litigant is clothed with locus standi upon obtaining a limited or full grant of letters of administration in cases of Intestate Succession. In Otieno -Vs- Ougo (Supra) this court differently constituted rendered itself thus;

“an administrator is not entitled to bring any action as administrator before he has taken out letters of administration. If he does, the action is incompetent as of the date of inception.”

Besides the respondent seemed to have confused the issue of locus standi and a cause of action. In Alfred Njau & 5 Others -Vs- City Council of Nairobi (Supra) this court had occasioned to discuss the two. They stated;

“Lack of locus standi and a cause of action are two different things. Cause of action is the fact or combination of facts which give rise to a right to sue whereas locus standi is the right to appear or be heard in court or other proceedings.”

The court proceeded to state;

“To say that a person has no cause of action is not necessarily tantamount to shutting the person out of the court; but to say he has no locus standi means he cannot be heard even on whether or not he has a case worth listening to.”

The applicant may be having a cause of action or interest as a beneficiary to protect and preserve the estate or intermeddling and waste. She however has lacked locus standi to secure the relief sought. Without first obtaining either limited or full grant of letters of administration. I therefore uphold the Preliminary Objection and find that the applicant had no locus to file the application dated 21.7.2020 which is hereby struck out. Each party to bear his/her own costs.

Dated and Delivered at Bungoma this 3rd day of February, 2021

S.N. RIECHI

JUDGE