

REPUBLIC OF KENYA

IN THE HIGH COURT AT KISII

SUCCESSION CAUSE NO. 21 OF 2015

IN THE MATTER OF THE ESTATE OF MAEBA OCHARO (DECEASED)

AND

PETITION FOR LETTERS OF ADMINISTRATION AND COLLIGENDA

BONA BY ELIZABETH ONDIEKI & JOSEPHINE KWAMBOKAA SIMION.....PETITIONERS

RULING

1. On the 26th January 2015 **Elizabeth Ondieki** and **Josephine Kwamboka Simion** petitioned for a **letters of administration ad colligenda bona** for purposes of collecting, getting in and receiving the estate and such acts as may be necessary for the preservation of the same and until further representation be granted. They specifically sought the letters to ward off an intermeddler/ grabber by the name of Peter Moturi Morang'a who alleged to have bought the deceased's Plot No.34B-Keroka Town- albeit illegally and unprocedurally.

2. The deceased was their father and father in- law he died on the 5th April 2008. The application dated 25th January 2015 was granted by the court on the 12/2/2015. On the 21/5/2015 the court ordered that a fresh limited grant of letters of administration ad colligenda bona be issued and that the grant of letters of ad litem be cancelled.

3. On the 21st May 2015 Kwamboka Maeba the remaining wife of the deceased, filed an objection to making a grant under rule 17 (1). She avers in her affidavits that the 2 petitioners did not include the other dependants and heirs of the deceased and that the estate is large and complex including land parcel number Nyaribari Masaba/ Bonyamasicho/751. That the 2 petitioners have secretly managed succession cause 21 of 2015 to the exclusion of other family members. In her affidavit dated the 14th March 2017 she avers that she is the remaining wife of the deceased, she should be first in priority to effect succession to collect the assets of the deceased. That she owned with her late husband plot no. 34B Keroka market of which the same was sold to the 3rd party called Peterson Moturi Moranga. That the petitioners have started misusing the ad colligenda bona issued to them. She sought to have it cancelled.

4. In a replying affidavit dated the 15th May 2017 Josephine Kwamboka Simion avers that Kwamboka Maeba is part of the group that intermeddled with the property when she conspired with some family members to sell plot no. 34-B Keroka town. That they cannot sit and watch as the applicant and other family members prematurely waste, dispose of and intermeddle with the property of the deceased. That on the 18th March 2015 they instructed their advocate on record to request the court to replace the letters of administration ad litem issued on 12th February 2015 with letters of administration as colligenda bona and the same was issued.

5. The issue for determination is whether the letters of colligenda bona issued to the petitioners should be cancelled. Rule 36 of the Probate and Administration Rules provide as follows;

“Where, owing to special circumstances the urgency of the matter is so great that it would not be possible for the court to make a full grant of representation to the person who would by law be entitled thereto in sufficient time to meet the necessities of the case, any person may apply to the court for the making of a grant of administration ad colligenda bona defuncti of the estate of the deceased.

6. What the petitioners did was in order, any person can apply for a letters of grant of administration as colligenda for purposes of collecting and getting in and receiving the deceased's estate and to do such acts as would be necessary for the preservation of the estate. The applicants sought the order to stop intermeddling with Plot No. 34-B Keroka Market and Land Parcel No. Nyaribari Masaba/ Bonyamasicho/757. The letters granted was not for administering the estate. To administer the estate the petitioners or applicant should have petitioned for grant of letter of administration intestate. The letters of administration colligenda bona had only one purpose for collecting and getting in and receiving the estate. Its purpose was for a limited period even if the court did not state the period in its order. The deceased died on the 5th April 2008, the beneficiaries of his estate should by now have petitioned for a grant of letters of administration under the Law of Succession Act Cap. 160. The petitioners have not demonstrated that they have done so neither the applicant. The letters of administration as colligenda bona is therefore cancelled. The petitioners shall return the letter of administration as colligenda dated 12/2/2015 for cancellation. This file is closed.

Dated signed and delivered at Kisii this 5th day of March 2019.

R.E.OUGO

JUDGE

In the presence of;

Mr. Sagwe for the For the Applicant/Objector

Mr. Bigogo For the Petitioner/ Respondents

Rael Clerk