



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**SUCCESSION CAUSE NO. 301 OF 2015**

IN THE MATTER OF THE ESTATE OF ALICE WANZA MULWA (DECEASED)

**RULING**

This is a ruling in respect of an application dated 29/11/2016 filed by the applicant/petitioner in person seeking to have a limited grant of letters of administration Ad Colligenda Bona issued on 7/4/2015 confirmed. Application is supported by a sworn affidavit deponed on the 29<sup>th</sup> November, 2016 by the applicant.

In her supporting affidavit, the applicant averred that she was the sole administrator and beneficiary of the estate of her late grandmother Alice Wanza Mulwa who died intestate on 1/3/2005. She further averred that there were no dependants hence proposed confirmation of the said grant and that the property known as L.R. No.12715/109 situate at Syokimau Farm be inherited by her.

Since nobody else came up to oppose the application, the same proceeded for hearing exparte. Although applications of this nature ordinarily and in practice are confirmed as a matter of course when there is no objection, this particular one appears to be abit strange.

May I briefly outline some background on this matter. The applicant/petitioner herein moved to court on 12/2/2015 through a petition/application dated 11<sup>th</sup> February, 2015 filed under certificate of urgency seeking for a limited grant of letters of administration Ad Colligenda Bona for purposes of suing in respect of the estate of Alice Wanza Mulwa. The urgency was grounded on the fact that she wanted to file a suit at Machakos Environment and Land Court on behalf of the estate.

That application was presented before Judge Musyoka who upon perusal did not find it urgent and infact declined to grant the orders. He actually pointed out that land was not perishable and wondered why she had not applied for full grant. He had the application marked stood over generally.

However on 7/4/2015 same application was placed before Judge Musyoka again who allowed the application but limited to filing the suit, collection and preservation of the estate of the deceased. It is this limited grant Ad Colligenda Bona that the applicant is seeking to have confirmed. The question that begs for an answer is whether a limited grant of letters of administration Ad Colligenda Bona, issued herein for specific purpose can be confirmed for purposes of distributing the estate.

There is of course a difference between limited grant of letters of administration intestate under form P & A 41 and a limited grant of letters of administration Ad Colligenda Bona under form 47 as in this case. The two grants are not the same as they do not apply interchangeably or in substitution of each other. Whereas Ad Colligenda Bona is issued specifically for purposes of preserving the estate, the grant of letters of administration intestate is wider as it goes beyond preservation and stretches to confirmation stage hence distribution of the estate. Before me, the petition herein is not for a full grant. For a full grant, the applicant is expected to have filed several forms among them Form P & A 57 for personal sureties, P & A 11 being affidavit of justification of the proposed sureties, P & A 12 Affidavit of justification of proposed administrator, P& A 5 being Affidavit in support of petition for letters of administration intestate listing beneficiaries, assets and liabilities, P & A 80 which is a petition for letters of administration intestate and Form P & A 38.

After filing the necessary accompanying documents inter alia Chief's letter, death certificate and documentary evidence as to proof of ownership of the estate, the same is forwarded to Principal Registrar for search and thereafter gazettelement for purposes of public notice. It is after gazettelement that anybody interested would file an objection within 30 days and if not confirmation after six months. In this file, due process necessary for full grant has not been followed nor has the estate been gazetted. The applicant is seeking to inherit the estate through a limited grant The orders sought for cannot apply in their current form. The petitioner should move the court for a full grant in the same file before rushing for confirmation of grant which does not exist in law.

Accordingly, application is hereby dismissed.

Order accordingly.

DATED, SIGNED AND DELIVERED THIS 15<sup>TH</sup> MARCH, 2017.

**J.N. ONYIEGO (JUDGE)**

In the presence of the applicant in person