



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

**ELC CASE NO. 585 OF 2013**

**TERESIA WAIRIMU KIRIMA.....PLAINTIFF**

**VERSUS**

**FATHER ROMEO & ANOTHER.....DEFENDANT**

**RULING.**

The Plaintiff herein **Teresia Wairimu Kirima** brought this Notice of Motion dated 20<sup>th</sup> May 2013 seeking for an injunction against the Defendants from dealing with or wasting the **Land Parcel No. 5908/8**. Interim Orders were issued on 21/5/2013.

The Respondents herein opposed the application and also filed a Notice of Preliminary Objection.

The Respondent stated that the applicant herein is not the administrator and or the executor of the Estate of **Gerishon Kamau Kirima** within the meaning of section 2 of Law of Succession Act. That further the plaintiff has no **Locus Standi** and/or capacity to file a suit and /or application on behalf of the deceased Estate in the absence of Grant of letters of Administration or Grant of probate of written will and/ or limited grant for that purpose.

Respondent averred that the Notice of Motion dated 3/6/2013 is incompetent, bad in law and incurably defective and the same should be struck out with costs for being an abuse of the court process.

The Applicant opposed the Preliminary Objection. She stated that she is the wife of the deceased and that the issue of locus is settled in Article 22 of the constitution and Article 159 (2) which enjoin the court to do justice without undue regard to technicalities.

The Respondent responded that the issue of **locus standi** is not a technicality but the law. Respondents further averred that **articles 22 and 159 of the constitution** have not been violated.

There is no doubt that the said suit land is in the name of **Gerishon Kamau Kirima**. There is also no doubt that the applicant herein is the widow of the late **Gerishon Kamau Kirima**. There is a succession cause **No. 1298 of 2011** pending in Court. Section 2 of the succession Act Cap 160 Laws of Kenya provides that:-

“ *The provisions of this Act **Shall** constitute the Law in Kenya in respect of and shall have universal applications to all cases of intestate to testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of Estate of those persons*”.

It is therefore clear that the administration of estate of any deceased persons has to follow the provisions

of Cap 160. It is also trite law that properties of deceased persons are administered by their legal (personal) Representatives or Administrators of the Estate.

Section 3 of the interpretation provides:-

*“Administrator means a person to whom a grant of letters of administration has been made under this Act”.*

Through there is no doubt that **Teresia Wairimu Kirima** is a spouse of the late **Gerishom Kamau Kirima**, the alleged proprietor of **LR No. 5908/8** as per the attached grant, there is no evidence that she has letters of Administration or Grant of representation and thus capacity to bring this suit.

It is alleged that the suit land is subject of succession cause No. 1298/2011. There is no evidence that in the said succession cause, the applicant herein has been declared the Personal Representative or legal Administrator of the **Estate of Gerishom Kamau Kirima** to give her capacity to sue on behalf of the Estate. May be the parties should have sought the preservative orders in the said succession cause.

As was held in the case of **Troustik Union International and Another Vs Alice Mbeyu and Another, Civil Appeal No. 145 of 1990.**

“Personal Representatives are people who have obtained grant and not blood relations. If an administrator brings an action before obtaining Grant the same is incompetent from inception”.

Also in the case of **of Pedee Builders Ltd vs Petronilla Ojiambo Odori Civil Appeal No. 170 of 1992 .** It was also held that:-

*“ A Deceased’s widow cannot competently bring a claim on behalf of the Deceased Estate without first obtaining Grant of Representation to the Estate”*

The applicant herein has not obtained Grant of Representation and so she cannot bring a claim on behalf of the Deceased Estate.

It is clear therefore, that the suit herein was brought before the Applicant/Plaintiff obtained Letters of Administration. The suit is therefore incompetent and I will have no option but to strike it out. I am also guided by the findings in the case of **Jonathan Orengo Obiayo Vs Moses Ondiegi Okoth, Civil Appeal No. 146 of 1990,** where the Court also held that:-

*“ A suit filed by an Administrator before obtaining Grant of Letters of Administration is incompetent and the Plaint should be struck out.”*

The preliminary objection herein is on a point of law. I find that the same does not offend the provisions of article 22 and 159 of the constitution. A party needs to have capacity or locus standi before bringing a claim in court.

For the above reasons, the Court upholds the preliminary objection and finds that, the suit filed is incompetent and bad in law. The same is struck out with costs to the Respondents.

It is so ordered.

Dated, signed and delivered this 5<sup>th</sup> day of July 2013

**L.N.  
GACHERU**

NVI.

In the Presence of:-

Wanjohi holding brief Onduso for the Plaintiff

Njuguna for the Defendant

**L.N. GACHERU**

10045.

Ruling read in open Court in the presence of Wanjohi holding brief for Onduso for Plaintiff and Njuguna for Defendant.

**L.N. GACHERU**

NVI.