



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO: 942 OF 2012

IN THE MATTER OF THE ESTATE OF HUSSEIN DUNGARWALLA (DECEASED)

RULING

1. The petitioner herein, Neelam Dungarwalla, prays that a Grant of Letters of Administration ad Colligenda bona do issue for the purposes of preserving the estate of her deceased husband, Salim Hussein Dungarwalla who died intestate on 30th July 2011.
2. The petitioner wishes that the purposes of the ad Colligenda Bona grant, although expressed to be limited to the preservation of estate do extend to:-
 - (i) ***Enabling the petitioner to be enjoined in a civil suit, H.C.C.C. (ELC) 2315 of 2007 (wherein the deceased was the plaintiff) and prosecute the same.***
 - (ii) ***Obtaining conservatory orders allowing the petitioner to control the deceased's shareholding in a company known as Xplico Insurance Company Limited.***
 - (iii) ***Enabling the petitioner to receive from the said company all income, salary, emoluments, dividends due to the deceased and his estate for the purposes of the petitioner's maintenance and that of other dependants of the deceased.***
3. The petitioner having produced the plaint in the noted suit to prove its existence and in view of the fact that the same would abate on 30th July 2012, I certified the petition as urgent. Being of the view, however, that the grant sought would not assist the petitioner in all and every respects, I directed that the applicant do file authorities and make submissions to support the petition and the prayers sought.
4. I have considered the oral submissions by counsel and the authorities cited in support. The law is that a Grant of letters of Administration ad Litem is what a party needs to represent a deceased person in a suit which survives him. A Grant of Letters of Administration ad Colligenda Bona on the other hand is for authorizing a petitioner to collect the estate of the deceased, without any power of distributing the same. This is clear from the provisions of the Succession Act and other authorities cited by counsel for the applicant.
5. I have noted that the petitioner has already obtained a Grant of Probate in the High Court of Justice in England, the sealing of which she fears will take too long, hence the filing of this petition.
6. Clearly the petition is not procedurally sound. However guided by the provisions of **Article 159 (b) (d) and (e) of Constitution of Kenya 2010** and in the interests of justice, I will overlook the procedural defect and allow the application in part.
7. I order that a Grant of Letters of Administration ad Litem do issue to the petitioner for the purposes only of substituting the deceased in the law suit as the personal representative of his estate.
8. As regards the petitioner's other needs I direct that the petitioner applies under certificate of urgency, if

that be the case, for the sealing of the Grant obtained in the English Court.

9. Orders accordingly.

DATED, SIGNED and DELIVERED at NAIROBI this 5th DAY OF JULY, 2012.

M.G. MUGO
JUDGE

In the presence of :

Mr. Nderitu for the applicant.