

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Succession Cause 309 of 2009

IN THE MATTER OF THE ESTATE OF STEPHEN IGOGO MATHERI –DECEASED

JOEL KAVIU MUGO.....1ST PETITIONER

NJUE MUGO.....2ND PETITIONER

RULING

This court on 11/6/2009 made a ruling that the applicants herein had no capacity or locus standi to file an application seeking orders to preserve the estate of one Stephen Igogo Matheri since they did not have a limited grant of letters of administration authorizing them to preserve the said property.

Mr. Okwaro for the applicants was of the view that the court failed to appreciate the law in this area and he thus filed the application dated 26/6/2009 seeking a review of the said order. In his address to court, he cited the provisions of Section 66D of the Succession Act which he said the applicants were relying on. I would nonetheless wish to inform Mr. Okwaro that this court is well aware of that provision and is of the firm view that the same does not apply in these circumstances Section 66 of the Law of Succession Act provides as hereunder

“When a deceased has died intestate, the court shall, save as otherwise expressly provided, have a final discretion as to the person or persons to whom a grant of letters of administration shall, in the best interests of all concerned, be made, but shall, without prejudice to that discretion, accept as a general guide the following order of preference.

Creditors”

.....

Section 66 (d) on which he is relying is not read in isolation. It must be read with the main Section 66. It relates to creditors being issued the grant of letters of administration but not with them purporting to administer the deceased’s property without a grant.

Indeed the only persons who are allowed in law to preserve the property of a deceased who has died intestate where no grant has been applied for within one month is either a chief, or an administrative officer etc pursuant to Section 46 of the law of Succession Act, who in turn must report any steps taken to preserve the estate to the Public Trustee.

A creditor does not appear anywhere in those provisions. Indeed, the law is clear to the effect that a person can only get locus standi to file a suit on behalf of a deceased’s estate if he is issued with a grant of letters of administration by a court of law. Other than this, he remains a stranger to the estate and can actually be accused of intermeddling with the property of a deceased person contrary to Section 45 of the Law of Succession Act. Even a creditor must obtain the limited grant of letters of administration before he can interfere with the estate of a deceased person.

I am convinced that there is no error on the face of the record in this matter to require me to review my earlier ruling. My stand is that Section 66 D does not ipso facto confer locus standi on a creditor. He still needs to go through the motions of getting the grant of a letters of administration before he can interfere with the estate of a deceased person. If however Mr. Okwaro strongly feels that I erred in my ruling, this would amount to a wrong exposition of the law, and the only recourse he has in law is to appeal against that ruling and not seek a review. This application is devoid of merit. I dismiss the same with no order as to costs.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 2nd day of Nov 2009.