



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: GICHERU TUNOI AND SHAH, JJ.A.)**

**CIVIL APPEAL NO. 8 OF 1996**

**BETWEEN**

**COAST BUS SERVICE LTD .....APPELLANT**

**AND**

**SAMUEL MBUVI LAI .....RESPONDENT**

**(Appeal from the Judgment and decree of the High Court of Kenya at Machakos (Honourable Mr. Justice J. L. Osiemo) dated 6<sup>th</sup>, July 1995**

**IN**

**H.C.C.C. NO. 136 OF 1993**

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**JUDGMENT OF THE COURT**

This appeal raises a short point for decision, that is to say, whether letters of administration obtained by a plaintiff, after the date of filing of the suit, give him any Locus Standi to make claims under the Law Reform Act (Cap. 26) Samuel Mbuvi Lai, the respondent (plaintiff in the superior Court) filed suit in the superior court on the 26<sup>th</sup> day of July, 1993 claiming damages against the appellant (defendant) under the Fatal Accidents Act (cap. 32) and the Law Reform Act. The Award of the damages made under the Fatal Accidents Act is not in issue before us. The appellant obtained a limited grant to administer the estate of late George Mukabi Lai on the 8<sup>th</sup> day of November, 1994. The claim in the superior court was on behalf of the estate of late George Mukabi Lai and also by his dependants.

The superior Court awarded damages under the Law Reform Act under two heads as follows:

Pain & suffering Shs. 5,000.00

Loss of expectation of life Shs. 70,000.00

Mr. Chacha Odera who appeared for the appellant argued that obtaining of letters of administration after the date of the filing does not validate the award made under the Law Reform Act. He invoked in aid section 80(2) of the Law of Succession Act in support of his argument. The said section reads:

“80(2) A grant of letters of administration, with or without the will annexed, shall take effect only as from the date of the grant”.

This sub-section can only be read to say that an administrator is not entitled to bring an action as administrator before he has taken out letters of administration. If he does the action is incompetent (in relation to relevant claim) as at the date of its inception. The doctrine of relation back of an administrator’s title, on obtaining a grant of letters of administration, to the date of the intestate’s death, cannot be invoked as to render the action competent.

Quite clearly the respondent lacked standing to present and prosecute a suit for the benefit of the deceased’s estate.

This point was decided by a five-judge bench of this court in the case of Troustic Union International and Another V. Jane Mbeyu and Another (Civil Appeal No. 145 1990, unreported).

The learned judge, with respect, erred in awarding the sums (totalling Shs. 75,000/=) earlier referred to by us.

The upshot of this is that this appeal is allowed with costs and the figure of Shs. 272,200/= awarded by the learned judge is reduced to Shs. 197,200. The costs in the superior court will turn on the reduced award, that is, the costs in the superior court will be taxed on the basis of the judgement sum of Shs. 197,200/=.

**Dated and delivered at Nairobi this 23<sup>rd</sup> day of May, 1997.**

**J.E.GICHERU**

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**JUDGE OF APPEAL**

**P.K. TUNOI**

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**JUDGE OF APPEAL**

**A.B. SHAH**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

**DEPUTY REGISTRAR**