



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA IN BUSIA

ENVIRONMENT AND LAND COURT

ELC NO. 12 OF 2018

ABRAHAM ODHIAMBO ONYANGO (suing as

Personal Rep of ROMAN ONYANGO ONYUMA.....PLAINTIFF

VERSUS

JOSEPH OCHIEL ONYANGO.....DEFENDANT

R U L I N G

1. The Defendant in this matter – **JOSEPH OCHIEL ONYANGO** – filed a Notice of Preliminary Objection dated 6/4/2018 on 17/4/2018. In the notice, he stated that the Plaintiff has no locus or capacity to bring the suit as filed. He further said that the suit is a non-starter and should be dismissed with costs.

2. On 19/9/2018, the court directed that written submissions be filed. The Defendant’s submissions were filed on 9/10/2018. It is clear that the suit is faulted because the Plaintiff – **ABRAHAM ODHIAMBO** – has instituted it as personal representative of one **ROMAN ONYANGO ONYUMU** who is deceased. The Defendant alleged that the Plaintiff does not have the necessary grant from the probate court to enable him to sue on behalf of the estate of a deceased person.

3. The Defendant’s submissions were filed on 16/1/2019. The submissions contains only a one-liner averment as follows: **“The Plaintiff by his further list of documents filed on 23/10/2018 confirms he obtained a grant prior to initiating this suit”**.

4. I have considered the objection as raised and the rival submissions of both learned counsel. In the Plaintiff’s further list of documents, there is a Limited Grant of Letters of Administration Ad Litem issued to the Plaintiff on 8/3/2017. The suit was filed on 21/2/2018. It is not true therefore to say that the Plaintiff lacks capacity to institute the suit. The suit is properly before the court as the Plaintiff has the necessary grant. The Preliminary Objection therefore cannot be upheld.

5. But the Plaintiff made a small mistake namely: He failed to include the grant in his list of documents when he filed the suit. That however is now cured by the subsequent filing of a list of further documents which included the Grant itself.

6. The Preliminary Objection is therefore found to be without merit and is hereby dismissed. I make no order as to costs.

Dated, signed and delivered at Busia this 20th day of February, 2019.

A. K. KANIARU

JUDGE

In the Presence of:

Plaintiff: Absent

Defendant: Absent

Counsel for Plaintiff: Present

Counsel for Defendant: Absent

