IN THE HIGH COURT OF TANZANIA

AT SONGEA

MISCELLANEOUS CIVIL APPLICATION NO. 5 OF 2012

EDITHA FLORENCE KIMARIO .... APPLICANT

VERSUS

JANE MAPUNDA KIMARIO .... RESPONDENT

R U L I N G

10th – 13th December, 2013

KWARIKO, J.

The respondent herein is the administratrix of the estate of the late **FLORENCE DAMAS KIMARIO.** Therefore, the applicant herein has filed this application complaining against the respondent's failure to provide medical and educational expenses in respect of one of the daughters of the deceased named **EDILITRUDA FLORENCE KIMARIO.** The applicant is the mother of

EDILITRUDA. This application is brought in terms **of sections 108 and 138 of the Probate and Administration of Estate Act Cap. 352 R.E. 2002** and it is supported by the affidavit of the applicant. In opposition to this application the respondent herein filed a counter-affidavit and a notice of preliminary objection to the following effect;

> *"That the applicant has neither locus nor*
>
> *cause of action against the Respondent*
>
> *justifying her to file this application"*.

On 3/10/2013 when the matter was called for hearing of the preliminary objection the parties agreed and the court granted them leave to argue the same by way of written submissions. The submissions have been filed save for the rejoinder submission by the respondent which the court believes that she did not find it necessary to file the same.

In her submission in support of the application the respondent contended that the applicant has no *locus standi* to file this application since she is not one of the beneficiaries of the deceased estate. That, since she is complaining on behalf of one of the beneficiaries of the deceased estate **EDILITRILDA F. KIMARIO** ought to have shown under what capacity she is suing on her behalf. That, **EDILITRIDA** is an adult hence she has capacity to sue and be sued since

she is aged more than twenty (20) years having been born on 26/3/1993. Also, if the applicant intended to represent the said beneficiary ought to have shown a Power of Attorney given to her to that effect. Thus, the applicant has no *locus standi* to sure or have no any cause of action against the respondent since she is not one of the beneficiaries of the deceased estate.

In reply to the foregoing submission the respondent contended that she has locus standi since she has a place and locality where she lives and prepared this chamber application. The applicant defined the word *locus* as used by the respondent in his submission as obtained in the **Dictionary** by **P.G. Osborn, Sweet and Maxwell,** 1964 to mean **"Place, locality, location, area, place of incident".** Therefore, it was the applicant's contention that the respondent has not shown that the applicant has no *locus standi* to file this application. As for the allegation that the applicant has no cause of action she submitted that the same is non-meritorious since it is supposed to be covered during the hearing of the application. Finally, the applicant contended that the preliminary objection ought to be on point of law and not facts as the respondent has presented. She prayed the same to be overruled.

For the foregoing this court is poised to decide the issue whether the preliminary objection has merit.

First of all I have understood the respondent's use of the word *locus* she

meant *locus standi* since that former word is used casually to mean a person

having no authority to do something. Therefore, as in relation to the applicant's

locus standi to bring this application, I have gone through the court record in

respect of this case and found that the applicant has not been listed as one of

the beneficiaries of the deceased estate. In law for one to bring any action

against the administrator/administratrix of the deceased estate they should first

prove that they are either beneficiaries or creditors in that respect. Hence the

applicant ought to have shown her stand to bring this application. A rule

regarding *locus standi* is that judicial redress is available only to a person who

has a legal injury by reason of the violation of his legal right by impugned action

be it by a public authority or by a private individual.

In the case at hand the applicant has brought this action on behalf of her

child one **EDILITRUDA FLORENCE KIMARIO** who is the daughter of the

deceased and beneficiary of his estate, meaning that she is not the one affected

by the impugned action. If that is the case the applicant ought to have shown a

capacity under which she brought an action on behalf of **EDILITRIDA.** This is

so because according to the birth certificate annexed to this application

EDILITRUDA is aged more than twenty (20) years as she was born on

26/3/1993. At this age this girl has attained the age of majority as she is above

eighteen years. **The Law of the Child Act No. 21 of 2009** defines a child to mean a person under the age of eighteen **(section 4 (1)).**

Therefore, either the said beneficiary ought to have filed any complaint against the administratrix personally or should have given any one else including the applicant herein Power of Attorney to do so. The issue of the Power of Attorney also ought to be done in accordance with the law since it is not always that a person gives another Power of Attorney without complying with legal conditions in that respect.

Henceforth, the applicant has no *locus standi* to bring this action against the administratrix of the deceased estate. If the applicant had *locus standi* then I would have discussed whether or not she has a cause of action against the respondent. Therefore, the applicant who has no *locus standi* to sue, her application is incompetent before the court and it is hereby dismissed. I order no costs considering the relationship attached between the parties. Order accordingly.

M.A. KWARIKO

JUDGE

13/12/2013

Delivered in chambers today in the presence of the Applicant and in the absence of the respondent. Miss Hobokela Court Clerk present.

M.A. KWARIKO

JUDGE

13/12/2013