**Re Succession – Limited Grant**

**Division:** High Court of Kenya at Nairobi

**Date of judgment:** 30 November 2000

**Case Number:** 1731/00

**Before:** Ang’Awa J

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Succession – Limited Grant – Types of limited grant – Limited grant* ad colligenda bona *– Limited*

*grant* ad litem *– Their purpose – Procedure – (Chapter 160) Section 67(1) – Succession Act – Rule 36 –*

*Probate rules*

**Editor’s Summary**

Ang’awa J was assigned the Probate Portfolio in November 2000. Being concerned with the procedure advocates were using to bring applications for limited grant, she requested about 30 advocates with applications before her to submit on the purpose of limited grants, the various types of grants and the procedure to be used to come to court. In March 2000 the senior deputy registrar had issued an internal memo to all the staff in the registry of the Family Division, explaining that applications for limited grants should be brought by way of application before a single judge. The memo was issued at the directive of the judge then presiding on probate, requiring*, inter alia*, that limited grants be by way of application before a judge. Ang’awa J was concerned that applications and petitions for the purpose of limited grants *ad litem* (for purposes of filing suit) had not been brought properly before her. On submission.

**Held** – Under section 97 of the Law of Succession Act (“the Act”), it is the Rules Committee that is empowered to make rules pertaining to the procedure for coming into court. The general practice is for the applicant to make a petition for grant. The deputy registrar would ensure all the necessary papers were filed and then minute the judge in charge that the matters were ready for gazzetment. Subsequently, if after 30 days no objection had been received, the registrar would minute the file and the judge would order issued the letters of administration or probate. The gazettment was not necessary for limited grants under section 67(1). There are various types of limited grant, including limited grant *ad colligenda bona defuncti* and limited grant *ad litem*. Only the former is exempt from the requirement for gazzettment under section 67(1) of the Act. An application for the former is brought under section 67(1) of the Act and Rule 36(1) of the Probate Rules. The Applicant is required to file Form P and A 85 and Form P and A 19. In respect of the grant *ad litem*, the application is brought under section 54 of the Act and paragraph 14 of the Fifth Schedule thereto. The forms are P and A 19 and probably P and A 90 with modification. *Per curiam*: Generally, full grants should be applied for to limit duplicity of grants. The various applications for grant *ad litem* struck out for being defective in form.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Gibbs v Roy* 85 CLJ 280

*Hadija v Iddi* [1974] EA 50

*Troustic Union International v Jane Mbeya* CA/4590