



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL SUIT NO 119 OF 2019

IVY ATIENO ODHIAMBO.....PLAINTIFF

VERSUS

THE LAKE REGION MICRO-CREDIT ENTERPRISES.....DEFENDANT

RULING

INTRODUCTION

1. The Plaintiff's Notice of Motion application dated 6th June 2019 and filed on 7th June 2019 was seeking injunctive orders against the Defendant and/or his agents and/or servants and/or employees from interfering with the properties known as Plot No 1188 Sunton Kasarani and Plot No 727 Kasarani (hereinafter referred to as "the subject premises") or any other property of the estate of the late Moses Timothy Odhiambo pending the hearing and determination of the suit herein. She had also sought to have the OCS Kasarani Police Station ensure the compliance of the said orders.
2. In support of the said application, she swore an Affidavit on 6th June 2019 and a Supplementary Affidavit on 30th July 2019. She stated that she was one of the administrators of the Estate of Moses Timothy Odhiambo (hereinafter referred to as "the deceased") and that objection proceedings were pending hearing and determination in the Succession Cause. She said that on instructions of the Defendant herein, M/S Regent Auctioneers carted away and sold Motor Vehicle Registration Number KBP 411J and KAR 094V (hereinafter referred to as "the subject motor vehicles") without having issued a proclamation.
3. She added that on 9th May 2019, the Defendant wrote to her indicating that they had taken over management of the subject premises. She pointed out that the tenants in the subject premises, which was part of the deceased's estate that was yet to be administered, had not paid rent as they did not know to whom they should pay the rent and as a result, she and her siblings had suffered and continued to suffer great loss. She was emphatic that the Defendant had also not provided any proof that it had already sold the subject premises.
4. It was her contention an injunction ought to be granted to enable her authenticate the Defendant's claims especially after conclusion of the objection proceedings so that she could engage them substantively as the Defendant had colluded with the Objectors in **Succession Cause No 780 of 2018** to disinherit and frustrate them.
5. In opposition to the said application, the Defendant filed Grounds of Opposition dated 1st July 2019 on 5th July 2019. It pointed out that the Plaintiff did not have authority of the Co-administrators to institute the suit herein and that she had not disclosed that the subject premises were in contention in **Succession Cause No 780 of 2018** and that she had relied on a fake certificate.
6. In a Replying Affidavit of David Ochieng Opon, a director of the Defendant sworn on 1st July 2019 and filed on 5th July 2019, the Defendant reiterated the lack of competency of the Plaintiff to file the present suit. It was emphatic that even if it was not an Objector in the Succession matter, it was aware that there were objection proceedings filed therein showing that the deceased owed it money and that consequently, she was being dishonest by saying that the Defendant was faceless.
7. It averred that the subject motor vehicles were sold to third parties following an advertisement in the Daily Nation of 8th October 2019 by M/s Regent Auctioneers. It added that it was now the owner of the deceased's subject premises as the loan was never cleared by him and/or his Guarantor.
8. It stated that the Certificate that was presented to court by the Plaintiff did not exist and that it sold Plot No 1188 Kasarani and Plot No 727 after the deceased defaulted in paying the loan.
9. On 31st July 2019, it also filed a Preliminary Objection dated 28th July 2019 reiterating the aforesaid grounds of opposition and added that

the suit as drawn was incompetent as the Plaintiff could not institute the proceedings in her name but in the name of the estate of the deceased.

10. This court found it prudent to deal with the Preliminary Objection in the first instance as a preliminary objection if successful can dispose of the suit. In this regard, it had due regard to the celebrated case of **Mukisa Biscuit Manufacturing Co Limited vs West End Distributors Limited (1969) EA 696.**

11. The Defendant argued that save for a Gazette Notice, the Plaintiff had not furnished the court with a Grant of Letters of Administration to demonstrate that she had authority to institute the suit herein.

12. On her part, the Plaintiff urged this court not to depart from the provisions of Section 3A of the Civil Procedure Act Cap 21(Laws of Kenya) that provides that:-

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make orders as may be necessary for the ends of justice or to prevent abuse of court process.”

13. Notably, the Law of Succession Act Cap 160 (Laws of Kenya) has outlined an elaborate process of making an application for grant of letters of administration under Section 51 of the Law of Succession. The procedures for objecting to the issuance of the grant of letters of administration and confirmation of the same have also been given in Section 68 and Section 71 respectively of the Law of Succession. It is therefore evident that once a petitioner petitions to be granted a grant of letters of administration, the same cannot be confirmed until objection proceedings have been dispensed with, if at all any have been instituted.

14. It was clear from the parties' pleadings that there were objection proceedings in the Succession Cause and hence no person had been appointed to be an administrator of the deceased's estate.

15. While the court agreed with the Plaintiff's advocates that the court has inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of court process, it can only proceed as such if the proper parties are before it. In this case, it is not clear who the administrators of the deceased's estate are and in the circumstances, this court was not persuaded that it should grant the Plaintiff the substantive orders that she had sought. On that preliminary point only, this court agreed with the Defendant that the Plaintiff's suit could not be sustained as it was.

DISPOSITION

16. For the foregoing reasons, the upshot of this court's decision was that the Defendant's Preliminary Objection dated 28th July 2019 and filed on 31st July 2019 was merited and the same is hereby upheld. The effect of this is that the Plaintiff's Notice of Motion application dated and filed on 6th June 2019 was not merited and the same is hereby dismissed with costs to the Defendant.

17. It is so ordered.

DATED and DELIVERED at NAIROBI this 10th day of March 2020

J. KAMAU

JUDGE