



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MURANG'A**

**CIVIL CASE NO 4 OF 2016 (O. S.)**

**JEREMIAH MUKANGU GIOCHE** (*suing as the legal representative of the estate of SAMUEL GIOCHE IKUA*).....**PLAINTIFF**

**VERSUS**

**SAMUEL KANYORO IKUA**.....**1<sup>ST</sup> DEFENDANT**

**MURAYA JASTAN**.....**2<sup>ND</sup> DEFENDANT**

**MUTUGA KIRENGE**.....**3<sup>RD</sup> DEFENDANT**

**JOHN GIOCHE MUOGE**.....**4<sup>TH</sup> DEFENDANT**

**RULING NO. 2**

1. The plaintiff lodged the *originating summons* dated 6<sup>th</sup> April 2016 seeking, among other reliefs, taking of accounts; and, dissolution of a partnership styled *Mugwanja Trading Company*.
2. Contemporaneously with the summons the plaintiff brought a *notice of motion* praying for preservation of the assets of the partnership; an order to compel the defendants to bank earnings from partnership properties into the partnership bank account at the Co-operative Bank Ltd; and, to form a caretaker committee to superintend the process of winding up the partnership.
3. That motion was contested by the defendants. One of the objections taken was that the plaintiff had no standing; That whereas he purported to initiate the suit as the “legal representative” of a deceased partner, Samuel Gioche Ikua, the plaintiff was relying on a *limited grant of letters of administration ad litem* issued on 16<sup>th</sup> February 2016 in Nyeri Chief Magistrates Court Succession Cause No. 1 of 2016. However, a full grant of letters of administration intestate to the same estate was issued earlier to another party, Timothy Ikua Gioche, on 7<sup>th</sup> March 2003 in Murang’a Senior Principal Magistrates Court Succession Cause No. 17 of 2003. The latter grant has since been confirmed.
4. The motion was heard by way of written submissions before *Waweru J* on 27<sup>th</sup> March 2017. When the learned judge retired to consider the matter, he formed the opinion that an important legal issue needed to be canvassed further by the parties: Can the limited grant *ad litem* oust the previously issued *full grant* for any purpose at all?
5. By a preliminary ruling delivered on 31<sup>st</sup> May 2017, the learned judge invited the disputants to “*address [the court] on this issue before ruling can be rendered on the notice of motion dated 6<sup>th</sup> April 2016*”.
6. I heard learned counsel for all the parties on 26<sup>th</sup> February 2020. It is not contested that the plaintiff approached the High Court upon the foundation of the *limited grant of letters of administration ad litem* issued by the lower court on 16<sup>th</sup> February 2016. It also common ground that by the time that grant was issued, a full grant of letters of administration had been issued to another party, Timothy Ikua Gioche, on 7<sup>th</sup> March 2003 and subsequently confirmed. The riposte by the plaintiff is that at the time he presented the originating summons, he was unaware of the other proceedings or the issue of a confirmed grant.
7. The preliminary issue for determination is narrow and straightforward. The **Law of Succession Act** would never countenance a situation where two different parties hold two separate grants to the same estate; or, even worse, where the holder of a *special limited grant* tries to overrun a *confirmed grant* to the same estate. See *Re Estate of Mwaaura Mbira (Deceased)*, High Court, Kerugoya, Succession Cause 608 of 2015 [2018] eKLR. An aggrieved party obviously has the right to move the court to annul the grant.

8. I thus readily find that the *confirmed grant* issued to Timothy Ikua Gioche on 7<sup>th</sup> March 2003 in Murang'a Senior Principal Magistrates Court Succession Cause No. 17 of 2003 supersedes the *limited grant of letters of administration ad litem* issued to the plaintiff by the lower court in Nyeri on 16<sup>th</sup> February 2016.

9. It must follow as a corollary that the plaintiff lacked standing to present the originating summons. The interlocutory *notice of motion* dated 6<sup>th</sup> April 2016 has no legs to stand on and is *dismissed*.

10. In the interests of justice, I shall not make any order on costs.

It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG'A** this 23<sup>rd</sup> day of April 2020.

**KANYI KIMONDO**

**JUDGE**

**ORDER**

The date of delivery of this ruling was given to the parties at the conclusion of the hearing; and, by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March 2020 and published in the *Kenya Gazette* of 17<sup>th</sup> April 2020 as Gazette Notice No. 3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with Order 21 Rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

**KANYI KIMONDO**

**JUDGE**

**Ruling read in chambers in the presence of:**

Ms. Dorcas, Court Assistant.