



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
SUCCESSION CAUSE NO. 417 OF 2005
IN THE MATTER OF THE ESTATE OF JULIUS MIMANO
(DECEASED)
RULING

1. On 7th December 2016, the objector herein Ian Mbuthia Mimano, lodged an application dated 2nd December 2016. The said application seeks three principal prayers, namely:

- (a) that the 1st respondent be sanctioned for willful intimidation and harassment of the objector and his witnesses during the pendency of the matter;
- (b) that the 1st respondent be sanctioned for willfully and recklessly subjecting the assets of the estate of the deceased, namely Kirimara Coffee Estate, to loss and damage and or any loss occasioned to the estate of the deceased on her directives; and
- (c) that the court do issue such directives thereon as it may find fit and expedient.

2. The factual background to the application is set out in the two affidavits sworn in support by the objector and Julius Mwangi Macharia, on 2nd December 2016. Regarding intimidation, the objector avers that the 1st respondent called meetings of Mutanga Investments Limited with an agenda to remove him as a director of the company, which he pleads was intended to harass him. Mr. Macharia, manager of Kirimara Coffee Estate, and a witness in this matter also avers that the 1st respondent, in an effort to intimidate him, has terminated his employment and demolished his dwelling at the farm. The destruction of the assets of the estate refers to the pulling down of the structure at the farm where Mr. Macharia resided.

3. Mr. Macharia has taken steps to secure his rights after the acts that he complains of. On the termination of his employment, he sued Mutanga Investments Limited in Nyeri ELRC No. 231 of 2015, to challenge the same on grounds of unfair termination and wrongful dismissal. The suit has since been transferred to Nairobi. regarding destruction of property, he made a report at the Nyeri Police Station. He has made various reports, in addition, relating to intimidation and harassment. The said reports were booked under OB/29/11/12/2015, OB/3/8/1/2016, OB/32/8/01/2016 and OB/9/2016. Criminal proceedings were subsequently commenced against the 1st respondent in Nyeri Criminal Case No. 244 of 2016.

4. Upon being served with the application, the 1st respondent reacted to it by filing a Preliminary Objection on 17th February 2017, dated 16th February 2017. The notice raises three (3) principal grounds, namely –

- (a) That a probate court seized of a succession cause has no jurisdiction to determine complaints touching on the corporate governance of a company;
- (b) That the probate court seized of a probate and administration matter lacks jurisdiction to determine employment law matters touching on a witness and a company who are not parties to the succession cause; and
- (c) That the sanction sought is *res judicata* having been litigated in Nyeri ELRC No. 231 of 2015.

5. Both sides have filed written submissions on the preliminary objection. The objector's written submissions are dated 6th October 2017 and those by the 1st respondent are dated 20th November 2017.

6. On the intimidation of the objector, the 1st respondent argues that to the extent that the same relates to his removal as director of a limited liability company, that is an issue that the probate court ought not look at given that the company is a separate legal entity and its management is not a matter for the probate court as the said court ought only be concerned with distribution of the shares thereof. It is submitted that the objector ought to direct his removal as director to the appropriate forum. On the matter of Julius Macharia Mwangi, it is

submitted that his case is that of termination from employment. It is argued that matters of employment fall outside the jurisdiction of a court seized of a probate matter, and the ideal thing for the aggrieved party to do should be to move the court seized with jurisdiction over employment and labour relations disputes.

7. Overall, the 1st respondent argues that her preliminary objection on a point of law falls within the four corners of what the court in *Mukhisa Biscuits Manufacturing Limited vs. West End Distributors Limited* (1969) EA 696 defined as a proper preliminary objection. It is submitted that even an objection founded on a pure point of law still relies on facts; in this case the facts relied on by the objector which the 1st respondent assumes to be correct. The said facts being the removal of the objector as director of the subject company and the termination of the employment of his witness from employment with the said company and his eviction from the company house where he resided. The question the 1st respondent poses is whether at this stage of the application based on the uncontroverted facts stated by the objector without calling any further evidence the probate court has any jurisdiction to adjudicate over the issues. She then goes on to submit, founded on statutory provisions and case law cited, that the probate court would have no jurisdiction to delve into the matters.

8. The objector on his part submits that the preliminary objection is not founded on a pure point of law and has cited authority to support his contention.

9. I have carefully read through and considered the prayers sought in the instant application as well as the facts deposed in the affidavits in support of the application. To my mind, the objector is not inviting the court to determine whether or not he was lawfully removed as director of the subject company, neither is he seeking that the court determines the employment dispute between the company and his witness. Rather, he argues that the timing of his removal as director of the company and the termination of the employment of his witness suggest that the 1st respondent intended to intimidate and harass them on account of this case. I do not think, therefore, that that would affect the jurisdiction of this court to investigate allegations that witnesses before it have been intimidated by the actions of one of the parties to the dispute.

10. I do not find merit in the preliminary objection. I hereby dismiss the same. Costs shall be in the cause.

11. As a way forward, I hereby direct the 1st respondent to reply to the said application, if she is so minded, within fourteen (14) days. The parties shall thereafter file written submissions on the application, to be highlighted simultaneously with the written submissions filed in respect of the consolidated applications dated 16th June 2014, 24th September 2014 and 2nd July 2015.

DATED, SIGNED and DELIVERED at NAIROBI this 20TH DAY OF APRIL, 2018.

W. MUSYOKA

JUDGE