



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 representative and administrator
of the estate of the late SAMUEL GIOCHE IKUA).....PLAINTIFF**

VERSUS

1. SAMUEL KANYORO IKUA

2. MURAYA JASTAN

3. MUTUGA KIRENGE

4. JOHN GIOCHE MUOGE.....DEFENDANTS

PRELIMINARY RULING

1. The Plaintiff herein, by originating summons dated 06/04/2016 brought under **Order 37, Rule 10** of the *Civil Procedure Rules, 2010* sought certain declarations and orders in respect of properties of or claimed to belong to a partnership called *Mugwanja Trading Company* of P.O. Box 397, Murang'a. Together with the originating summons the Plaintiff also filed **notice of motion dated 06/04/2016** in which he sought four main orders as follows –

(a) An order to preserve the partnership properties set out in the originating summons.

(b) An order that the Defendants do bank and deposit all incomes and proceeds from the property known as Forthall Block 11/23 (and any other partnership property) in the partnership bank account No. 0110342210300 with *Co-operative Bank Ltd, Murang'a* pending hearing and determination of this suit.

(c) That the Defendants and the Plaintiff “**be formed into a caretaker committee for purposes of winding up the (partnership)... and to take such joint steps that are necessary to safeguard the interests of the partnership from waste and/or alienation**”.

The application is supported by the Plaintiff's affidavit. The court declined to grant any interim orders pending disposal of the application.

2. The Defendants have opposed the application by a **replying affidavit filed on 18/11/2016**. It is sworn by Samuel Mutuga Kirenge who has described himself as the Secretary of Mugwanja Trading Company. Apparently he is the 3rd Defendant.

3. One of the grounds of objection contained in the replying affidavit challenges the *locus standi* of the Plaintiff to bring this suit, in that whereas the Plaintiff purports to bring the suit as legal representative of the estate of one of the partners in the partnership who is deceased (**Samuel Gioche Ikua**) upon the strength of a limited grant of letters of administration *ad litem* issued on 16/02/2016 in *Nyeri CM Succession Cause No 1 of 2016*, there is someone else, **Timothy Ikua Gioche**, who has a full grant of letters of administration intestate in respect to the same estate issued on 07/03/2003 vide *Murang'a SPM Succession Cause No 17 of 2003* and subsequently confirmed.

4. The Plaintiff's response in his supplementary affidavit filed on 03/3/2017 was to trash this issue, saying that it should concern only the heirs of Samuel Gioche Ikua, and to state that he has the proper legal authority to represent his estate in the present suit. However, there is an important legal issue raised in the Defendant's challenge to the *locus standi* of the Plaintiff, and it is this: Can a limited grant *ad litem* oust a previously issued full grant (which has even been confirmed) for any purpose at all.

5. The court hereby invites the parties herein to address it on this issue before ruling can be rendered on the notice of motion dated 06/04/2016. It is so ordered. Costs shall be in the application.

DATED AND SIGNED AT MURANG'A THIS 25TH DAY OF MAY 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 31ST DAY OF MAY 2017