



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL SUIT NO. 604 OF 2012**

**GIBSON KAGOI MWANGI.....PLAINTIFF**

**VERSUS**

**KENYATTA NATIONAL HOSPITAL**

**THE STANDARD MEDIA GROUP**

**NATION MEDIA GROUP.....DEFENDANTS**

**RULING**

1. Before me are two applications. The first is the Notice of Motion dated 2<sup>nd</sup> November, 2013. It has been brought Section 2(1) of the Law Reforms Act, Section 3A and 5 of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules, 2010. The 1<sup>st</sup> defendant 1<sup>st</sup> defendant seeks to strike out the plaint. The application is premised on the grounds on the face of the application and the supporting affidavit of Wilkister Morara sworn on 2<sup>nd</sup> November, 2013. She is averred that the plaintiff lacks legal capacity having not taken out letters of administration and that the result is that this court lacks jurisdiction to try the suit.
2. The application was opposed by the plaintiff's replying affidavit sworn on 10<sup>th</sup> October, 2014. He contended that he had legal capacity to sue as an administrator of the estate of Gladys Muthoni Kagoi. The plaintiff annexed a limited grant of letters of administration ad litem to that effect.
3. The second application is a Notice of Motion dated 23<sup>rd</sup> April, 2014 brought under Order 2 Rule 15(1)(b),(c) and (d) and Order 51 Rule 1 of the Civil Procedure Rules 2010 and Sections 1A, 1B and 3A of the Civil Procedure Act. In this application the 3<sup>rd</sup> defendant seeks that the plaintiff's suit against it be struck out and/or dismissed.
4. The grounds upon which the application is premised are on the body of the application and the supporting affidavit of Sekou Owino sworn on 23<sup>rd</sup> April, 2014. He averred that the cause of action herein being libel, does not survive a deceased person. He further averred that the plaintiff has since the close of pleadings not taken pre-trial directions.
5. The application was opposed vide the plaintiff's replying affidavit sworn on 13<sup>th</sup> October, 2014. He contended that he not only filed the suit on behalf of the deceased's estate but also on his own behalf. He pointed out that he too was mentioned and his photograph appeared in the publications.
6. Parties agreed to have these applications dispensed with by way of written submissions however,

only the 3<sup>rd</sup> defendant's submissions are on record.

7. The 3<sup>rd</sup> defendant relied on the provisions of Section 2 (1) of the Law Reform Act (Cap 26) Laws of Kenya and the case of ***Hon. Emmanuel Karisa Maitha v. The Nation Media Group Ltd (2007) e KLR*** to highlight its argument that a defamation suit cannot survive a deceased person. The case of ***Hon. Karisa*** (supra) was also relied upon to argue out that it is wrong for the plaintiff to claim personal damages that are allegedly due to the deceased person.

8. In the said case my brother Khamoni J, held that:

***“...this suit beind a defamation suit, be reasons of the proviso to section 2(1) of the Law Reforms Act (Cap 26) which is in mandatory terms, the suit does not survive the deceased plaintiff even if the plaintiff died after an interlocutory judgment had been entered in his favour...secondly, in so far as the applicant is claiming to be a personal (legal) representative of the deceased on the basis of a limited grant of letters of administration ad litem, that grant is not good enough because:..there is no guarantee that the applicant, as the present holder of that limited grant, is the one to whom the full grant, in the estate of the deceased, will be issued.”***

9. It was agued further that the availing the limited letters of administration at the time of filing the replying affidavit rather than the plaint is a belated misadventure that ought not be allowed. The 3<sup>rd</sup> defendant relied in ***Francis Ochieng Oiro v. Nakumatt Holdings Limited (2009) e KLR***.

10. It was submitted that considering that such a suit is barred, this court lacks jurisdiction to try it. Finally, the 3<sup>rd</sup> defendant held the position that this suit discloses no reasonable cause of action. Relying in the case of ***Kariungi Kirubua v. Law Society of Kenya (2009) e KLR*** it was submitted that no libellous or defamatory publication had been specifically pleaded.

11. I have considered the depositions in both applications and the submission on record.

12. On the first application, the 1<sup>st</sup> defendant was of the opinion that the plaintiff lacked capacity having not taken out letters of administration. The plaintiff exhibited a limited grant of letters of administration ad litem in his replying affidavit the same was obtained on 23<sup>rd</sup> July, 2012, that is before filing this suit. The question that arises is whether that letter vests legal capacity on the plaintiff. Limited grant letters of administration ad litem are normally used for prosecuting or defending proceedings. It is to be used where; an executor as appointed for a limited purpose specified in the will, where a sole surviving trustee dies leaving no general representative or one who is unable or unwilling to act as such, where a deceased being a party to a pending suit dies and the executor or the person entitled is unable or unwilling to act, where the person to whom probate or letters of administration has been made is absent from Kenya and where it appears to the court to be necessary or correct to appoint some person not normally entitled to administer an estate or part thereof as the court thinks fit. I have taken the liberty to read the letters annexed by the plaintiff. The authority given to the plaintiff was limited to filing suit and administer the estate of the deceased according to law until further representation be granted. In my view therefore the plaintiff had the legal capacity to sue as a legal representative of the deceased.

13. I shall now address the second application. The first issue in this application is whether the suit should stand considering that the demise of Gladys Muthoni Kagoi. In view of the provisions of Section 2 (1) of the Law Reform Act, this suit cannot survive the deceased.

14. I have however noted that the plaintiff not only sued on behalf of the deceased but also on his own behalf. I shall therefore go ahead to consider whether there is no reasonable cause of action, I find that the words complained of were set out and the plaintiff explained how they were defamatory to the plaintiff. In my view the suit is not so weak beyond redemption. See ***D.T. Dobie & Company (K) Limited v. Muchina & Another (Civil Appeal No. 1978)***.

15. In the circumstances the application herein is disallowed. Costs shall be in the cause.

Dated, Signed and delivered in open court this 14<sup>th</sup> of November, 2014.

J.K.SERGON

**JUDGE**

In the presence of:

.....for the Plaintiff

.....for the 1<sup>st</sup> Defendant

.....for the 2<sup>nd</sup> Defendant