



REPUBLIC OF KENYA

High Court at Kisumu

Civil Case 78 of 2012

MARGARET MUSAGA WINDA.....PLAINTIFF

VERSUS

BOOKER WASHINGTON BONYO.....1ST DEFENDANT

LOLWE HOUSING CO-OPERATIVE SOCIETY LTD.....2ND DEFENDANT

R U L I N G

This is a ruling on a Preliminary objection argued here on 17/12/2012 and whose notice was filed on 19/11/2012 and dated 16/11/2012.

The thrust of the preliminary Objection is two-pronged viz:

- The Court lacks jurisdiction to hear and determine the suit, the same being a matter for co-operative tribunal.
- The plaintiff lacks capacity to sue on behalf of the estate of the late **GEORGE HABAKUK WINDA** as she has not yet taken out letters of administration.

During hearing of the Preliminary Objection on 17/12/2012 Awino for respondent/2nd defendant reiterated the points put forward in the notice.

In reply, the applicant, Margaret Musanga, said she appeared before the 2nd respondent many times and was even given a letter telling her to take the matter wherever she wanted. She then changed immediately to say she was actually not given a letter to that effect **BUT** was actually told verbally to go wherever she wanted.

On the issue of Letters of Administration, she said she had applied for them **BUT** she was **YET** to get them.

To the Court, it is plain that it is a matter for Co-operative Tribunal. The applicant is bringing the matter on behalf of her late husband – **GEORGE HABAKUK WINDA**.

George is said to have been a member of the 2nd defendant/respondent. Section 76 of the **CO-OPERATIVE SOCIETIES ACT (AMENDED) 2004** in the relevant part states as follows S.76(1) (b).

If any dispute concerning the business of a Co-operative society arises:

between members, past members, or deceased members, and the Society, its Committee, or any officer of the society, it shall be referred to the tribunal.

Its dispute is between a person acts on behalf of a deceased member and the 2nd defendant/respondent. That person then should be deemed to be a member. The matter then should be filed at the Co-operative Tribunal, not here. The Court agrees with Counsel for the 2nd respondent/defendant that the matter is wrongly here.

It is not enough for the applicant to say that the second respondent told him to go wherever she wanted. The 2nd respondent does not run the co-operative tribunal. She should have taken the matter to the tribunal.

There is also the other consideration namely: purporting to acting on behalf of the deceased – George Habakuk – without letters of administration. This is something that the law does not allow. This court cant allow it and, again, Awino's argument is upheld.

The upshot is that the preliminary Objection is upheld and the suit is hereby dismissed with costs.

A.K. KANIARU

JUDGE

28/1/2013

A.K. Kaniaru – Judge

Dianga – Court Clerk

Plaintiff/Applicant – Present

1st Defendant/Respondents – Absent

2nd defendant – Present through Konga Edward

Awino for 2nd defendant/Respondent

COURT: Ruling on Preliminary Objection raised here on 17/12/2012 read and delivered in open Court.

Right of Appeal – 30 days.

A.K. KANIARU – JUDGE

28/1/2013

AKA/va.