



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KITALE

Civil Suit 66 of 2012

MARGARET K. WAMBANI.....PLAINTIFF.

VERSUS

MICHAEL OKEYO ONDITI..... DEFENDANT.

R U L I N G.

On the 5th April, 2012, the plaintiff obtained letters of administration *ad Litem* respecting the estate of her late husband. The grant was limited to the purposes only for filing suit and until further representations were granted. Such grants enables a person to represent the estate where the estate has been sued or intends to sue. It is sought where it is necessary to make an estate a party to a suit and is different from a grant *ad colligenda bona* which is normally intended to give the administrator power only to collect and preserve the grant estate pending the making of a full grant.

The estate of the deceased is not a party to this suit which in actual sense involves the widow of the deceased and a brother of the deceased in control and management of the assets of the estate.

Paragraph 2 of the plaint dated 2nd May, 2012 describes the plaintiff as the administratrix of the personal estate of her late husband even though there is nothing showing that a full grant has been issued to her. Apparently, the plaintiff seems to be relying on the limited grant to assert her rights over the estate of her late husband. Undoubtedly, the plaintiff is entitled to assert her rights but it is doubtful whether she can do so without first obtaining a full grant of letters of administration respecting the estate of her late husband. If her intention was to collect and preserve the estate a grant *ad colligendabona* would have served the purpose.

Be that as it may, it is averred in the plaint that from the year 2005 until his death on 21st November, 2010, the deceased engaged the defendant as his confidential agent in the management of his movable and immovable assets in Kitale and upon the death of the deceased, the defendant as such agent continued to manage the estate of the deceased whereupon the defendant holds chattels and receives large sums of money from the rents and motor cycle boda boda business for the estate of the deceased for which he has not accounted and refuses to account to the plaintiff due to his long standing hostility against the plaintiff.

It is averred and contended by the plaintiff that the defendant is intermeddling in the estate of the deceased with impunity and threatens the plaintiff with harm. He denies the plaintiff and the children of the deceased access and intends to dispose of the movable and immovable property of the estate of the

deceased with a view to disinherit the plaintiff and the children of the deceased. The plaintiff also avers and contends that in his lifetime the deceased owned and also co-owned with the plaintiff certain properties which the defendant has been forcibly withholding and controlling to the exclusion and detriment of the plaintiff and other dependants of the deceased.

The plaintiff has therefore prayed for an account for all the rents collected from all developed properties since 2005 among other things. The plaintiff has also prayed for a permanent injunction restraining the defendant from harassing, insulting, intimidating or threatening the plaintiff and the minor dependants of the deceased and from interfering with the plaintiff's access, possession and use of the property forming the estate of the deceased and from dealing in any manner with the estate of the deceased.

The plaintiff has further prayed for an order for delivery to the plaintiff all the money, movable and immovable assets forming the estate of the deceased which are in possession of the defendant to facilitate full succession to the estate of the deceased.

In the Notice of Motion filed contemporaneously with the plaint on the 3rd May, 2012, the plaintiff seeks a temporary injunction order restraining the defendant from disposing off, alienating or dealing in any other manner with the estate of the deceased and from harassing, insulting, intimidating, threatening the plaintiff with her children with harm and interfering with the plaintiff's access, possession and use of the estate of the deceased pending the hearing and determination of this suit.

The application is based on grounds that the plaintiff is the widow of the deceased, that before or after the demise of the deceased the defendant/respondent was the agent of all the deceased's estate, but the defendant is and has continued to intermeddle with the deceased's estate without right or the plaintiff's prior consent, that the deceased's property is in danger of being wasted, damaged and alienated by the defendant and that the defendant is extremely hostile to the plaintiff.

These grounds are supported by the averments contained in the plaintiff's supporting affidavit dated 2nd May, 2012. The application is opposed by the defendant on the basis of the facts contained in his replying affidavit dated 28th May, 2012.

Basically, the issue for determination herein is whether the plaintiff has established the necessary conditions for the grant of an interlocutory injunction as set out in the case of **Giella vs. Cassman Brown (1973) EA 358.**

On whether the plaintiff has shown a prima-facie case with a probability of success, it is apparent that she is yet to obtain a full grant of the estate of her late husband. She cannot sustain this suit on the basis of a limited grant such as the letters of administration *ad litem* yet the estate itself is not party to the suit. It cannot therefore be said that the plaintiff has shown a prima-facie case with probability of success. By the same token, it cannot be said that the plaintiff will suffer irreparable injury without first and foremost obtaining the necessary "**locus-standi**" in the estate of her late husband.

On balance of convenience, there is no doubt that the plaintiff is the widow of the deceased and in the order of priority she would be entitled to grant of letters of administration of the estate of her late husband prior to the defendant who is a brother to the deceased. She therefore has a right to ensure that the estate of her late husband is preserved and protected prior to the issuance of the grant of letters of administration.

However, on the other hand, it is accepted that the defendant was the appointed agent of the deceased in the management of the assets of the deceased prior to his death and even after his death. Such agency would be lost once the plaintiff or any other person were to be granted the necessary letters of administration respecting the estate of the deceased. In the meantime, it would be appropriate to ensure that neither the plaintiff nor the defendant intermeddles with the assets of the estate.

In that regard, and since the defendant is in control of the management of the assets of the estate, the balance of convenience dictates that he be restrained from making any attempt to dispose of or alienating

the estate of the deceased and from interfering with the plaintiff's access, possession and use of the estate of the deceased pending hearing and determination of this suit. This does not however mean that the defendant's management of the assets of the estate will be interfered with by the plaintiff. Any such interference must await a full grant of letters of administration respecting the estate of the deceased.

In sum, let the "status-quo" be maintained.

[Read and signed this 14th day of June, 2012.]

[In the presence of M/s. Arunga for defendant and Mr. Wanyonyi for plaintiff.]

**J.R. KARANJA.
JUDGE.**