



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CIVIL APPEAL NO 87 OF 2006

NAOMI WANJIKU MWANGIAPPELLANT

VERSUS

GRACE NJERI THATHIRESPONDENT

JUDGMENT

A ‘Judgment’ according to Black’s Law Dictionary 8th Edition is defined as:-

“A court’s final determination of the rights and obligations of the parties in a case. The term Judgment includes an equitable decree and any order from which an appeal lies.”

A ‘Ruling’ on the other hand is defined in the same dictionary as:-

“The outcome of a court’s decision either on some points of law ,or the same case as a whole.”

If we were to follow these 2 definitions, it is clear then that the difference between a ‘Ruling’ and a ‘Judgment’ particularly in civil matters is very minimal. Often times, the word ‘Ruling’ and ‘Judgment’ are used interchangeably particularly in civil proceedings. This is so because, whereas a judgment is taken as a final decision by a court in a lawsuit or an appeal from the lower court’s Judgment, some rulings can also determine the rights of the parties to the suit with finality. Rulings as we understand them in our daily routine work come about when dealing with interlocutory applications. Judgments on the other hand come about after the court takes evidence from the parties and their witnesses. If we were to strictly apply the above, what would be the result when the court hears an originating summons and determines the same by way of Affidavits?

Would it be any different in instances where the court proceeds by way of taking viva voce evidence from the parties? Would the result of one be termed as a Ruling while the other would be dubbed a Judgment? I have engaged in this short discourse because one of the grounds proffered in this Appeal is that the magistrate after hearing the parties delivered a ‘Ruling’ instead of rendering a “Judgment”.

In this case, the learned magistrate heard an application or protest by way of viva voce evidence. Counsel for the Appellant believes that this was wrong because he was supposed to render a judgment. Supposing the protest had been determined by way of affidavits, would counsel for the Appellant have protested? For me in Succession matters, the difference between a Ruling and a Judgment is the same. I say so because a Ruling can also determine with finality the rights of the parties. Ground 1 of the Memorandum of Appeal is in my view just an academic point which does not affect the gist or substance

of the Ruling in question.

That said, I have carefully perused the pleadings before the subordinate court. One important ground must carry the day and it will render the other grounds moot.. This is a ground which was not raised in any of the grounds of Appeal filed. It was only raised in the written submissions of the Appellant's counsel dated 28th October 2010. The court notes that the submissions were served on the counsel for the Respondent but he did not respond to the same. I will therefore proceed under O42 Rule 4 which provides as hereunder;

***“The Appellant shall not, Except with the leave of the court urge or be heard in support of any ground of objection not set forth in the Memorandum of Appeal; but the High Court in deciding the Appeal shall not be confined to the grounds of objection set fourth in the Memorandum of Appeal or taken by the leave of the court under this rule.*”**

Provided that the High Court shall not rest its decision on any other ground unless the party who may be affected hereby has had a sufficient opportunity of contesting the case on that ground”

As stated earlier, counsel for the Respondent was served with the submission which contained this new ground but to date no response has been received.

This ground is on lack of jurisdiction on the part of the subordinate court. Counsel for the Appellant submitted and rightly so that the Succession Cause that gave rise to this Appeal was filed before a court without jurisdiction. He submitted that the value of the Estate as indicated in form P&A 5 was Ksh 200,000. I have referred to the said forms and confirmed that position. The Appellant herself filed the petition before the subordinate court in clear breach of section 49 of the law of Succession Act which pegs the pecuniary jurisdiction of the subordinate court in Succession matters at ksh100,000 Clearly therefore, the learned trial magistrate lacked jurisdiction to entertain the said cause and he heard the same in vain. Any proceedings, orders or rulings taken or given by a court without jurisdiction are null and void for all intents and purposes. The proceedings giving rise to this Appeal were therefore a nullity and so was the protest and the ruling emanating therefrom. This one ground disposes off this Appeal. I will not therefore deal with the other grounds of Appeal raised. I would nonetheless wish to point out 2 other legal points that have been raised in this Appeal by both counsel which I find pertinent and for the benefit of all parties concerned in this Appeal.

The first point is the point that the Law of Succession has no provision for Appeal. Counsel for the respondent belabored this point but with respect, he appears to have been submitting from a point of ignorance. Section 50(i) of the Law of succession Act (Cap. 160 of the Laws of Kenya) succinctly provides as hereunder;

“An Appeal shall lie to the High Court in respect of any order or decree made by a Resident Magistrate in respect of any estate and the decision of the High Court shall be final”

This Appeal is therefore properly before this court and it lies as a matter of right.

The second issue is that of lack of locus standi by the protestor before the lower court. I have consulted the record of the trial court. It is correct to say that the protest was filed on 24/8/2004 and that was almost a month before the Grant of Letters of Administration AD LITEM was issued – i.e. on 20/9/2004. The law on this point is that the Grant cannot operate retrospectively. The Grant is what clothes the party with locus standi to pursue matters on behalf of a deceased's estate. Any action therefore taken before such Grant is issued is therefore null and void for lack of legal standing on the part of the person filing it.

In sum, for the forgoing reasons, this Appeal must succeed. I allow the same and order that the entire proceedings before the subordinate court are null and void and of no legal value. The same are hereby quashed. I make an order that the petitioner in that suit or any other appropriate person to file the suit before a court of competent jurisdiction.

Due to the nature and effect of these orders, I order that each part will bear its own costs of this Appeal.

I also order in the interests of justice that the status quo obtaining as at the date of this Judgment be maintained until the rights of the affected parties are determined by a court with jurisdiction. I so order.

W. KARANJA
JUDGE

Signed by the above but delivered and dated at Embu this 31ST day of May 2011 by;

G. DULU
JUDGE