



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. 439 OF 2010

JOHN NJUGUNA MURUGI.....PLAINTIFF

VERSUS

EMELIA ANN MBAIRE MURATHE.....1ST DEFENDANT
HARRISON WAMBUI MUSYOKA.....2ND DEFENDANT
HOUSING FINANCE CORPORATION OF KENYA.....3RD DEFENDANT
REGISTRAR OF TITLES.....4TH DEFENDANT

RULING

On account of the decision which I have taken in this matter, I don't find it necessary to go into the merits or demerits of the application before the court. A reading of the entire file has left me in no doubt that this is not a commercial matter within the context of the classification of commercial matters issued by the then Chief Justice Cockar in his circular letter dated 18th November, 1997.

I note from the pleadings that the main prayer sought in the plaint in this matter is “**a permanent injunction restraining the 2nd defendant from transferring or in any way dealing with the suit property known as LR No 12149/30 IR 67345 pending the hearing and determination of this suit and/or the hearing and determination of the application for the annulment of the grant issued in NAIROBI HIGH COURT SUCCESSION CAUSE NO. 1940 OF 1998**”. The 1st and 2nd defendants are also accused of conspiring and skimming and indeed fraudulently obtaining letters of administration in respect of the estate of Mary Murugi John (deceased), the mother to the applicant.

In his supplementary affidavit sworn on 26th January, 2011 and filed in court the following day, Harrison Wambua Musyoka, the 2nd defendant, deposes in paragraph 3 thereof as follows –

“That I reiterate that indeed the plaintiff’s suit and application contravene the provisions of Section 6 of the Civil Procedure Act owing to the following reasons –

(i) The prayers sought in Succession Cause NO. 1940 of 1998 are similar to the prayers being sought in the present suit herein

(ii) That the subject matter in Succession Cause NO. 1940 of 1998 is similar to the subject matter in respect of this suit.

(iii) The parties mentioned in Succession Cause No. 1940 of 1998 are similar to the parties in the present suit herein in particular the applicant, 1st and 2nd defendants...”

This court cannot effectively dispose of this matter without reference to Succession Cause No. 1940 of 1998, whose file must be in the Family Division of this court. Instead of calling for that file to the Commercial Division, it is in my view that this matter will be better and more conveniently dealt with by the Family Division.

I accordingly expunge all the proceedings before me in this matter and direct that this file be and is hereby transferred to the Family Division of this court.

Orders accordingly.

DATED and DELIVERED at NAIROBI this 26th day of May, 2011

L NJAGI

JUDGE