



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL CASE NO. 252 OF 2007 (O.S.)

RHODA KANDIE.....1ST PLAINTIFF
 KIGEN KANDIE.....2ND PLAINTIFF
 KIPTUI KANDIE.....3RD PLAINTIFF
(all suing as the administrators of the estate of Aaron

Kimosop Kandie)

VERSUS

KANZIWA LIMITED.....DEFENDANT

RULING

Objection was raised by Miss Gatu Magana learned counsel for the Defendant in these proceedings to the production a certified copy of the Grant of Letters of Administration issued by the High Court in Nairobi on 9th November 2004, and granted to Rhoda Chelangat Kandie, Kiptui Kandie, Kipruto Kandie and Kigen Kandie in respect of the estate of the late Aaron Kimosop Kandie who died in Nairobi on 7th July 2002.

Counsel's objection centered on one principal ground namely that there was a discrepancy between this Grant and the Limited Grant Ad Litem issued to Rhoda Chelangat Kandie on 25th March 2003, and upon which the Originating Summons herein, dated and filed on 21st November 2007 was founded.

Counsel noted that the Grant to the Plaintiffs purports to have been issued on 9th November 2004, and was in existence when the suit herein was filed about three years later on 21st November 2007. The question is whether this Grant was genuine or not. Counsel submitted that as PW2 was not in the Family Division when the Grant was issued, and had not even seen the file, it was unsafe to admit the document. Counsel relied upon the provisions of Section 68(1)(a) and 69 of the Evidence Act, which relate to proof of documentary evidence.

The contentious document is a public document under Section 79(1) (a) (iii) being a document which forms part of the acts or records of acts of the Judiciary of Kenya. Section 83(1) of the Evidence Act, enjoins that the court shall presume to be genuine every document purporting to be a certificate, certified copy or other document which is purporting to be duly certified by a public officer.

Section 83(2) of the Act also enjoins the court to presume that any officer by whom any such document purports to be signed or certified held, when he signed, the official character which he claims in

such document.

Further under Section 85 of the Evidence Act, the production of the Gazette containing any notice purporting to be made in pursuance of a written law, where such notice purports to be printed by the Government Printer shall be prima facie evidence in all courts and for all purposes whatsoever of the due making and tenor of such notice.

In this case, the plaintiffs herein took out an application for Grant of Letters of Administration Cause No. 991 of 2003, published in the Gazette Notice No. 7873 of 30th June 2004, and were, pursuant to that application, and Gazette Notice issued with the Grant of Letters of Administration Intestate on 9th November 2004.

I think it must have been due to the negligence of counsel who first drew and filed the suit herein to attach the Limited Grant Ad Litem dated 25th March 2003.

Certainly under that Grant the 2nd and 3rd plaintiffs had no *locus standi*, and under the Limited Grant the suit would have abated upon the death of the 1st Plaintiff in 2008.

The suit would of course not have abated and has not abated in respect of the 2nd and 3rd plaintiffs, who are at liberty to proceed with their case against the Defendant under the Grant of 9th November 2004.

For all those reasons, I admit the certified copy of the Grant of Letters of Administration issued by the High Court through the Registry at Nairobi the 9th day of November 2004.

Dated, delivered and signed at Nakuru this 15th day of June, 2011

M. J. ANYARA EMUKULE
JUDGE