



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 12 of 2008**

**AGNES MUIRURI KAMANDE..... APPELLANT
VERSUS
CICILIA WANJIRU..... RESPONDENT
RULING**

Before me is an application by way of Notice of Motion dated 4th June, 2008 filed by AGNES MUIRURI KAMANDE described as PETITIONER/APPLICANT. The application was filed with an affidavit sworn on the same date by the applicant.

The application was purported to be brought under section 97 of the Law of Succession Act (Cap. 160) and Rule 63 (1), and 73 of the Probate and Administration Rules, as well as Order XLI and XLIV of the Civil Procedure Rules (Cap. 21). The application seeks 6 orders, some of which have been spent as follows-

1. (spent)
2. (spent)
3. *THAT* there be a stay of the order made on 11th May, 2007 in PMCC Murang'a Succession Cause No. 244/03 pending hearing and determination of this appeal.
4. *THAT* the respondent either by herself, servants or anybody howsoever claiming through her from selling, alienating, wasting, using, vandalizing, damaging or in any other manner so interfering with motor vehicle registration number KXG 092 Mitsubishi Canter Lorry until hearing and determination of the application and/or appeal herein.
5. *THAT* the motor vehicle KXG 092 be detained at Maragua Police Station and the OCS Muragua Police Station do enforce the said detention.
6. *THAT* costs be in the cause.

There are four grounds on the face of the application. The affidavit filed with the application gives the genesis and background to this application.

On 30th September, 2008, M/s J.W. Madahana & Company advocate entered appearance for the applicant. On 12th November, 2008 M/S Kimwere Josphat & Company came on record for the respondents.

A replying affidavit sworn by CECILIA WANJIRU KAMANDE was filed on 9th December, 2008. It was deposed inter alia, that the applicant was not entitled to the prayers sought. The applicant filed a supplementary affidavit sworn by herself on 15th December, 2008.

On the hearing date, both Mrs. Madahana for the applicant, and Mr. Kimwere for the objector addressed me.

Having considered the application, documents filed and the submissions of counsel for the parties, I will not grant the orders sought. The first reason is that the Memorandum of Appeal is in the name of AGNES MUIRURI KAMANDE as appellant, but it was signed by ANNE MUIRURI KAMANDE. The Notice of Motion before me is filed by ANNE MUIRURI KAMANDE, though the applicant is named as AGNES MUIRURI KAMANDE. I have not been told that the one who filed the application was an advocate representing the applicant. Nor have I been given any explanation regarding variance of names.

The second reason why I will not allow the application is that the applicant herself, in her supplementary affidavit, annexed a document of sale between CECILIA WANJIRU KAMANDE and SIMON SAMMY KARANJA in respect of motor vehicle Registration No. KXG 092 Nissan Canter dated 7th February,

2003. That person SIMON SAMMY KARANJA is neither a party to this application, nor was he served with the application

This court cannot give orders in vain, no issue orders that will directly affect persons who are not parties. I find it impossible to give orders which might not be enforced. I therefore will not grant the orders pending appeal that have been sought.

In sum, I find that the application lacks merit. I dismiss the same. Costs will await the decision of the appeal.

It is so ordered.

Dated and delivered at Nairobi this 10th day of March, 2010.

**GEORGE DULU
JUDGE.**

In the presence of-

Mr. Kariuki holding brief for Ms. Madahana for applicant.

David Mutisya – court clerk.