



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET
Misc. Civ. Appli. 74 of 2009

REPUBLIC APPLICANT

VERSUS

CHAIRPERSON KILIBWONI

DISPUTES TRIBUNAL..... 1ST RESPONDENT

THE PRINCIPAL MAGISTRATE’S

COURT KAPSABET 2ND RESPONDENT

THE ATTORNEY GENERAL 3RD RESPONDENT

AND

CLEMENTINA K. RUGUT 1ST INTERESTED PARTY

NICHOLAS K. MELI 2ND INTERESTED PARTY

KENNETH K. MELI 3RD INTERESTED PARTY

FRED MELI 4TH INTERESTED PARTY

PRISCILLA RUGUT 5TH INTERESTED PARTY

EDWIN K. MELI 6TH INTERESTED PARTY

EX PARTE APPLICANT JULIUS KIPLIMO RUGUT

RULING

At the hearing of an application under Order 53, Rules 1, 2 and 3 of the Civil Procedure Rules for judicial review orders, the Interested Parties raised preliminary objections on points of law, to wit:-

1. The subject lacks the mandatory legal capacity to institute the instant proceedings.
2. Consequently this suit is incompetent and unsustainable in law, and the Interested Parties pray that the same be struck off.

It is a common ground that the Ex parte Applicant is one Julius Kiplimo Meli who is the biological son of John Kimeli Rugut. He has instituted the application as “Guardian and Next Friend of John Kimeli Rugut who is an adult. In the Verifying Affidavit he says that John Kimeli Rugut suffers from mental illness and psychosis and therefore lacks the requisite legal and mental capacity to take proper care of himself. He annexed copies of Medical Reports to prove the said fact.

Under Section 26 of the Mental Act Cap. 248, the High Court is given the power to make orders.

**“S. 26 (a) for the management of the estate of any person suffering from mental disorder, and
(b) for the guardianship of any
person suffering from mental disorder by any near relative or by any other suitable person.”**

Order 31 of the Civil Procedure Rules deals inter alia with suits by or against persons of unsound mind.

Order 31, Rule 15 provides as follows:-

“15. The provisions in rules 1 to 14 so far as they are applicable shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reasons of unsoundness of mind or mental infirmity to be incapable of protecting their interest when suing or being sued.”

From the foregoing, it is certain that the law is that it is only a Court of law which can adjudge a person to be of unsound mind for purposes of suing or being sued. If a person whether a relative or not wishes to manage or protect the estate of any person suffering from mental disorder, he must obtain the leave of the Court first.

In the present case no Court adjudged John Kimeli Rugut to be of unsound mind as required under Order 31, Rule 15.

Also, the Applicant did not obtain leave of the Court to have legal powers of custody, management and guardianship of his father and father's Estate.

The doctor's letter dated 10.09.08 is not premised on any law and cannot invalidate John Kimeli Rugut's voluntary acts and transactions. Such a declaration that any transactions by Kimeli be considered void can only be given by a Court of law.

In view of the foregoing, the Notice of Motion dated 29th January, 2009 is incompetent and a nullity. I do hereby strike out the application with costs.

DATED AND DELIVERED AT ELDORET ON THIS 21ST DAY OF MAY, 2009.

M. K. IBRAHIM

JUDGE

In the presence of:

Mr. Langat holding brief for Mr. Nyolei for the Applicant

Mr. Rotich for the Interested Party