

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Environment & Land Case 79 of 2009

NADHA MOHAMED ALI.....PLAINTIFF/APPLICANT

VERSUS

BONIFACE MUSYOKA MUNAVU.....1ST
DEFENDANT/RESPONDENT

BOARD OF TRUSTEES, NATIONAL SOCOCIAL SECURITY FUND.....2ND
DEFENDANT/RESPONDENT

R U L I N G

The Plaintiff filed this suit against the Defendant seeking orders for a permanent injunction to restrain the 1st Defendant by himself in servants, agents and/or employees from trespassing constructing or in any way whatsoever interfering with the Plaintiff's possession and/or ownership of **LR No NAIROBI/BLOCK 21190/187**. The Plaintiff also sought costs of the suit.

The Defendant on being served with summons raised a preliminary objection to the Plaintiff's suit on the ground that the Plaintiff lacks legal capacity to bring this suit relying on paragraph 6 of the Plaintiff which states

“6” Following the death of my husband idle Ali Mohamed the 2nd Defendant confirmed the Plaintiff as the registered owner of the suit premises. “

Mr. Jaoko submitted that the Plaintiff having not obtained Letters of Administration to administer the estate of her late husband she had no capacity to file this suit.

Mr. Amendi Counsel appearing for the Plaintiffs submitted that the preliminary objection had no merit as the Plaintiff had brought this suit on her own behalf and all the instruments in respect of the suit premises are in her own name.

The Court is at a loss as to who of the two is telling the truth. The preliminary objection at this stage is premature as the same is brought before discovery. The same ought to have been raised after the pleading have been closed and documents in which the parties intend to rely to prove ownership discovered.

For the above reasons the preliminary objection is dismissed with costs.

Dated and delivered at Nairobi this 10th day of June 2009.

J. L. A. OSIEMO

JUDGE