



**Mohamed v Abdirahim (Civil Suit 329 of 2003)
[2009] KEHC 2599 (KLR) (Civ) (21 August 2009) (Ruling)**

AWO SHARIFF MOHAMED v ABDULKADIR SHARRIF ABDIRAHIM [2009] eKLR

Neutral citation: [2009] KEHC 2599 (KLR)

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

CIVIL

CIVIL SUIT 329 OF 2003

MK KOOME, J

AUGUST 21, 2009

BETWEEN

AWO SHARIFF MOHAMED PLAINTIFF

AND

ABDULKADIR SHARRIF ABDIRAHIM DEFENDANT

RULING

1. The objectors filed an objection against the execution of the decree in this matter. That objection was determined by an order of Lesiit J made on 17th July, 2009. ON 12th August, 2009, the objectors filed a chamber summons seeking inter alia for a temporary injunction to step the sale scheduled on 26th August, 2009 of defendant's properties known as LR. No.209/13688 formerly known as No. Block 103/564), LR. No.11969/119, LR. No.11969/258, LR No.119/42 pending the appointment of a legal representative of the decree holder who is now deceased.
2. This application is premised on the grounds that the objector filed a notice of appeal to the Court of Appeal in respect of the ruling by Lesiit J, however they could not file an appeal because the decree holder died. As provided for Order 23 of the Civil Procedure Rules the suit may proceed but a legal representative of the deceased estate should be appointed. Counsel argued that he only came to know today when he was served with the replying affidavit that a limited grant of letters of administration in respect of the estate of the decree holder were granted in P&A No.1774 of 2009 on 17th august, 2009.
3. This application was opposed on the grounds that the objectors are not parties to this suit as envisaged under Order 39 of the Civil Procedure Rules. The plaintiff cannot be enjoined from executing an order by way of an order of injunction. There is a letter of administration so the application and the prayers sought have been overtaken by events.



4. I have carefully considered this application against the background that it is brought by the objectors. I am not persuaded that the objectors are the parties envisaged under the provisions of Order 39 who can bring an application for injunction against a plaintiff at an execution stage. Further, the objection was determined by Lesiit J thus the remedy for the objectors is to file an appeal or pursue further proceedings in from the Court of Appeal. This court is now funtus official of this matter.
5. Lastly, there is a limited grant in respect of the estate of the decree holder, thus the prayers sought by the objectors have been overtaken by events.
6. For the above reasons, I find the application dated 12/08/09 lacking in merit, it is hereby dismissed with costs to the plaintiff.

RULING READ AND SIGNED ON 21/8/09.

M. K. KOOME

JUDGE

