



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Civil Case 146 of 2008

PETER KARANJA MWANGI.....PLAINTIFF

VERSUS

JOSEPH KAMANDE1ST DEFENDANT

JOHN KAMANDE NGUGI.....2ND DEFENDANT

R U L I N G

By a plaint dated 19th March 2008, PETER KARANJA MWANGI, the Plaintiff herein, sought for judgment against JOSEPH KAMANDE and JOHN KAMANDE NGUGI, the 1st and 2nd Defendants herein in the following terms:

- (a) *An order of eviction directed at the 2nd Defendant from the Plaintiff's land.*
- (b) *A permanent injunction to restrain the two Defendants from trespassing the Plaintiff's land or harassing the Plaintiff's family.*
- (c) *Costs*
- (d) *Any other relief.*

The Plaintiff also took out the notice of motion dated 25th June 2009 in which he sought for the following orders *interalia*:

- (i) *That the Murang'a Law Courts Land Dispute Tribunal application No. 32 of 2009 seeking to have the pronouncement of Maragua Land Dispute's case No. 56 of 2009 (against parcel No. LOC 7/ICHAGAKI/645) into a judgment be temporarily halted until the final determination of this Court case No. 146 of 2008.*
- (ii) *That the Principal Magistrate, Murang'a Law Courts and the two Defendants in the H.C.C.C. No. 146 of 2008 be ordered to maintain the status quo as at the time of filing and serving this application.*
- (iii) *That costs of this case be provided for.*

The motion is supported by the affidavit of Peter Karanja Mwangi sworn on 25th June 2009. When

served with the motion and the plaint, the Defendants filed a notice of preliminary objection dated 13th July 2009 in which they stated *interalia*:

“(a) *That the Plaintiff lacks locus standi in the matter in that the subject being an estate of a deceased person, no orders can attach or abide the estate except in a succession matter, and no grant of representation has been issued on the cause.*

(b) *The entire suit does remain an abuse of the due process of law and court and ought to be struck out.*”

The grounds raised in the notice of Preliminary Objection are restated in the defence of the 2nd Defendant. When served with the Preliminary Objection, the Plaintiff opposed the same by filing what he referred to as reply to grounds of opposition. When the motion came up for interpartes hearing, the Preliminary Objection had to be disposed of first. The Plaintiff admitted that he did not obtain the Grant of Letters of Administration in respect of the Estate of Njeri Karanja, deceased before filing this suit. In view of the admission, the question is whether or not the motion and the suit are competently before this Court?

It is not in dispute that the subject matter of this suit is the parcel of land known as L. R. NO. LOC. 7/ICHAGAKI/645. The aforesaid parcel of land is in the names of NJERI KARANJA, deceased. So far, no one has taken up Letters of Administration in respect of the estate of Njeri Karanja, deceased.

The Court of Appeal in the CIVIL APPEAL NO. 145 OF 1990 BETWEEN TROUSTIK UNION INTERNATIONAL AND INGRID URSULA HEINZ VS MRS. JANE MBEYU AND MRS ALICE MBEYU (UNREPORTED) HELD AS FOLLOWS:

“The administrator is not entitled to bring an action as administrator before he has taken letters of administration. If he does, the action is incompetent at the date of its inception.”

It follows therefore that the answer to the question posed hereinabove is to the effect that the motion and the entire suit are incompetently before this Court for want of Letters of Administration on the part of Peter Karanja Mwangi. The Plaintiff therefore has no *locus standi* to take up these proceedings. Consequently, I find the Preliminary Objection as having merit. It is upheld with the resultant order that this suit and the subsequent applications are hereby ordered struck out with costs to the Defendants.

Dated and delivered this 16th day of October 2009.

J. K. SERGON

JUDGE