

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

Civil Appeal 164 of 2004

JEWELS & ANTIQUES (K) LIMITED.....PLAINTIFF/APPELLANT

VERSUS

STEPHEN KINUTHIA.....DEFENDANT/RESPONDENT

MONICA WAMBUI KINUTHIA (The Legal Representative of the Deceased Defendant)

J U D G M E N T

The facts which gave use to this appeal may briefly be stated. The appellant sued one Stephen Kinuthia now deceased and obtained judgment for Sh. 1,845,746.80 but before he would execute Stephen Kinuthia died. The appellant applied to execute against Monica Wambui Kinuthia the Respondent herein in her capacity as the legal representative of the deceased Defendant.

The application was opposed by the Respondent on the ground that although she had applied for Letter of Administration there was an objection filed by one Njeri Kinuthia in her ruling which gave rise to the appeal delivered. On 17th November 2004, the Deputy Registrar found that the respondent Monica Wambui had not obtained letters of Administration and therefore she is not the Legal Representative of the estate to the late husband.

Mr. Sharma Counsel for the appellant submitted that the Respondent does not deny that the estate of the Judgment debtor was over Shs 500 m. and the respondent is willing to settle the debt and having been substituted as a party to the suit there is no valid reason why she should not settle the debt, the appellant having obtained the order of the court for the payment of the same.

But Mr. Kiai Counsel for the Respondent submitted that judgment was entered against deceased in 1993 and the decree was extracted to execute until the year 2000 when the deceased died. The Respondent applied for Letters of Administration but the same were objected to by Njeri Kinuthia so that before the issue of Legal Representations is sorted out execution cannot issue against the Respondent.

The issue here is whether before the Respondent obtains Letters of Administration. She has the legal capacity to settle the liabilities of the estate of the deceased. The Deputy Registrar made a finding and rightly so that the Respondent Monica Wambui Kinuthia is not a Legal Representative as she has not been granted the Letters of Administration and the property to be attached if at all is not legally hers at this point and time. I have no reason to interfere with her decision.

The appellant has no option but to wait until the issue of legal representation is sorted out. After all judgment was obtained in 1993 and there were efforts made to execute until 2000 when the Judgment debtor died which is about 8 years later.

For the above reasons, and having regard to the peculiar circumstances of this case, I have reached the conclusion that the appeal has no merit and it is rejected.

In the result the appeal is dismissed with costs to the respondent.

Dated and delivered at Nairobi this 26th day of February 2008.

J. L. A. OSIEMO

JUDGE