



REPUBLIC OF KENYA

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

Civil Case 868 of 1988

WANJOHI KABIA.....PLAINTIFF/RESPONDENT

VERSUS

JOSEPH WAHOME T/A SIMBA BUILDING CONSTRUCTION

AND

ELENA WANGECHI WAHOME....DEFENDANT/APPLICANT

RULING

By way of this Chamber Summons dated 14th December 2006 and amended on 24th September 2007 brought under Order XXI rule 22 Order XLIV Rules 1 and 2 of the Civil Procedure Rules and section 63 (e) of the Civil Procedure Act the defendant seeks orders of stay of execution pending the hearing and determination of this application. She also sought an order for review and/or set aside this court's order of execution against the applicant made on 3rd November 2003. Prayer 2 was granted on 20th June 2007. What is before me is prayer for review.

The application is based on the grounds as stated on the body of the Chamber Summons and supported by an affidavit sworn by the applicants.

The facts which gave rise to this suit as gathered from the affidavit evidence may briefly be stated. The applicant is the widow of the late Joseph Wahome now deceased. The plaintiff who is now the applicant successfully sued the late Wahome for defamation and obtained judgment on 22nd November 1990. He was awarded Shs. 200,000/= damages. The plaintiff did not execute until Wahome died. Upon the death of Joseph Wahome succession proceedings were brought by Annah Nyaguna Wahome who was issued with Letters of Administration on 4th July 1995. The grant was confirmed on 4th February 2000 and the estate of the deceased Joseph Wahome was distributed in accordance to the schedule on the certificate of grant. On application by the plaintiff dated 11th July 2003 the court issued an order of execution against the applicant which she has now applied to have reviewed and/or set aside.

Mr. Nganga counsel for the applicant submitted that the matter was between the applicant's husband as the defendant and Wanjohi Kahia and the plaintiff. Judgment was delivered on 22nd September 1990 for a sum of Shs. 200,000/= general damages for defamation. The said Joseph Wahome died 3 years after judgment. At that time no attempts were made to execute the decree. The grant was confirmed on 4th

February 2000. The plaintiff never notified the estate of his liability against the estate which was distributed after the grant was confirmed. When the estate has been distributed the powers of the administrator lapses and the administrator ceases to be legal representative of the estate of the deceased.

The application is opposed by the respondent who has filed replying affidavit. Mrs Waiganjo counsel for the plaintiff submitted that the application seeking orders to review warrant of arrest issued on 3rd November 2003 is not attainable since the said orders had lapsed and subsequently orders of execution were issued on 5th December 2006. Attempts were made to execute the decree and it was only after the warrant of arrest in execution were issued on 7th December 2006 that the applicant rushed to court to have the order set aside.

I have carefully considered the application in light of the affidavits on record and the arguments by both counsel. The plaintiff sued the deceased for defamation and he was awarded Shs. 200,000/= damages. He never executed the decree until the defendant died 3 years later. A succession cause was filed whereby the applicant and her co-wife was issued with Letter of Administration. The plaintiff did not notify the estate of the deceased about his liability against the estate. The grant was confirmed on 4th February 2000 and the estate of the deceased was distributed. It is trite law that after the distribution of the estate of a deceased the powers of the administrator lapses and the administrator ceases to be legal representative and no suit can be brought against such administrator. Therefore the order of execution issued against the appellant on 3rd November 2003 was irregular and cannot be enforced.

Accordingly I allow the applicant's Chamber Summons dated 11th December 2006 and amended on 24th September 2007 and set aside the order of execution against the applicant issued on 3rd November 2003 with costs to the applicant.

Dated and delivered at Nairobi this 16th day of May 2008.

J. L. A. OSIEMO

JUDGE