



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

Civil Case 239 of 2008

NJUGUNA NGARUIYA 1ST PLAINTIFF

MARGARET KABURA NYAGA 2ND PLAINTIFF

VERSUS

MARGARET WARUIRU KIMANI DEFENDANT

RULING

APPLICATION FOR A MANDATORY INJUNCTION 20 MAY 2008

1: Background

1. This suit filed on 20 May 2008 touches on the estate of the late Naomi Kabura Ngaruiya who passed away intestate and left no issue.

2. Njuguna Ngaruiya Margaret Kabura Nyaga and another not party to this suit allege that they hold letters of grant to the said estate (The title of this suit should have read;- “Suing as administrators/administratrix to the estate of the late Naomi Kabura Ngaruiya.”).

3. In any probate matter a party is not permitted to file an application for an injunction in a Succession cause. The parties filed this present suit seeking injunction orders against Margret Wairimu Kimani the defendant herein from intermeddling with the estate of the deceased.

4. The defendant was served ten days before the hearing

date of the application. She filed no papers in reply to the allegations that she was intermeddling with the estate.

II: Application for a mandatory injunction.

5. The applicants herein ask that the defendant to stop collecting rent to the various properties. To then hand over the said accounts. To achieve this, the applicants then levied distress on tenants who protested. The defendants went to the Succession Cause case and filed papers to challenge the estate grant of letters and that she was not named as a beneficiary.

6. From the proceedings and extracts of the Succession Cause the defendant appears to be living and

or may be related to the deceased. That she was at all times the rent collectors and the tenant were never in arrears with the rents. The two plaintiffs have levied distress for rent when there had been no arrears.

7. Another fact that emerged is that there are actually 3 administrators and not two. The third administrator was not in support of this suit.

8. The question therefore arises whether there would be a prima facie case made out to warrant an injunction – mandatory to compel the said defendant to give accounts of the rental collection of the estate?

III: Application 20 May 2008

9. The applicants advocate argued that the said defendant should be restrained from dealing with the properties.

iv) Opinion

10. The administrators are not in argument in this case. The issue of how the administrators of the properties of the deceased was to be conducted. It is this courts opinion that there may be a challenge as to the plaintiffs locus as administrators to this estate.

11. The court has stated in the past that mandatory injunction is not available in Kenya unless in special circumstances. In this matter it is important to note that a prima facie case has not been made to warrant a mandatory injunction to issue against the defendant.

12. I hereby decline to grant the injunction orders as prayed and accordingly dismiss the same with costs.

DATED THIS 17TH DAY OF JUNE 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

P. Nganga of Khaminwa & Co. Advocates for the plaintiff/applicant – present

Defendant Margaret Wairimu Kimani is unrepresented - present