

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1359 of 2003

HON. EMMANUEL KARISA MAITHA PLAINTIFF

versus

THE NATION MEDIA GROUP LTD DEFENDANT

AND

RACHEL MAITHA APPLICANT

RULING

From what has been brought to my attention during the hearing of this Chamber Summons dated 25th August, 2005, the same is hereby dismissed with costs to the Respondent for the following reasons:

Firstly, this suit being a defamation suit, by reasons of the proviso to Section 2(1) of The Law Reform Act (Cap 26) which is in mandatory terms, the suit does not survive the deceased plaintiff even if the plaintiff died after an interlocutory judgment had been entered in his favour following failure by the Defendant to enter appearance and file defence within the prescribed time. This court also notes that there is a pending application by the Defendant to set aside the interlocutory judgment being relied upon by the Applicant, obviously not a final judgment entered after proof of relevant facts of the case.

Secondly, in so far as the Applicant is claiming to be a personal (legal) representative of the Deceased on the basis of a Limited Grant of Letter of Administration *Ad Litem*, that Grant is not good enough because:

- (a) It enables the Applicant to acquire the proceeds of the suit when the same Grant gives her no power to deal with those proceeds in terms of Section 82 and 83 of the Law of Succession Act thereby creating the opportunity for intermeddling with that asset in the estate of the deceased.
- (b) There is no guarantee that the Applicant, as the present holder of that Limited Grant, is the one to whom the full grant, in the estate of the deceased, will be issued.

Dated and delivered at Nairobi this 20th day of March, 2007

J.M. KHAMONI

JUDGE