

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

Civil Case 834 of 2003

ANTHONY NJOROGE KIARIE MARIE ANGELA WACHEKE

**(both suing as the Administrators of the Estate of the late BENSON KIARIE
NJAU.....PLAINTIFFS**

VERSUS

**MOHAMED EGA MUSA.....
DEFENDANT**

RULING

The plaintiffs suing as the administrators of the estate of the late BENSON KIARIE NJAU brought this Notice of Motion seeking orders that pending the hearing and determination of this suit, the defendant be compelled to deposit all payments received and to be received by him as rent for the suit premises L.R. NO. 209/8294/133 South C Nairobi into an Interest Earning Bank Account to be opened in the Joint names of the Advocates for the parties involved herein and in the alternative pending the determination of this suit the defendant be compelled to deposit in court or in a Bank Account the sum of Shs.2,252,000/= being the outstanding balance of the purchase price of the suit property.

The application is premised on the grounds:

- (a) That the plaintiffs have now discovered that the defendant has rented out the suit premises yet he is not the owner of the suit premises and has no locus or capacity to rent out the same.
- (b) The defendant continues to receive rent payments from the tenants in the suit premises yet he has not completed payment of the purchase price for the said premises.
- (c) The defendant does not deny the fact of the outstanding purchase price.
- (d) The vendor, the applicants' father died before receiving the full purchase price from the defendant and the applicants are the vendor's Legal representatives.

The application is opposed by the defendant who has filed Grounds of Opposition. In paragraph 2 of the Grounds of Opposition the defendants avers that the present application lack in merit as the plaintiffs have no locus standi to sue in that the ownership of the suit property is vested in one Samuel Mwangi Njau and Margaret Wanjiru Njau.

This is confirmed by Certificate of Title ANK 2 page 15A and this is conceded by the applicants in paragraph 15 of the affidavit in support of the application sworn by the first plaintiff Anthony Njoroge Kiarie. On 9th February 2005 in which he avers that upon learning from the defendants replying affidavit that there were other persons who appear to have also obtained rights to administer the deceased's estate have now filed an application in the said **NAIROBI HIGH COURT SUCCESSION CAUSE NO. 248 OF 2002** seeking orders to revoke the said rival Letters of Administration. The application was filed on 11th August 2005.

This being the position, until those rival Letters of Administration are revoked the applicants have no locus to bring this suit and I therefore decline to grant orders sought in the Notice of Motion dated 9th February 2005 and the same is dismissed with costs to the respondent.

Dated and delivered at Nairobi this 13th day of September 2006.

J.L.A. OSIEMO

JUDGE