

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Civil Case 163 of 1998

MUGURE MAHINDA (suing as the Administrator

Of the estate of Godfrey Wanjohi Mahinda).....PLAINTIFF

VERSUS

KIHOTO FARMERS CO. LTD & 2 OTHERS.....1ST DEFENDANT

SAMUEL GAKINYA KARIUKI.....2ND DEFENDANT

RULING

On the 10th of February 2005, Mugure Mahinda purporting to be the administrator of the estate of Geoffrey Wanjohi Mahinda filed an application under a certificate of urgency to restrain the defendants, Kihoto Farmers Company Limited and Samuel Gakinya Kariuki, by means of a temporary injunction from interfering with her possession and ownership of parcel number **L.R. No. 7502/4 and 7202/6**, pending the hearing and determination of the suit filed herein. When the defendants were served with the application, they raised several grounds, in preliminary objection to the application filed by the said Mugure Mahinda. The defendants main contentions in their preliminary objection were that the said Mugure Mahinda was a total stranger to the proceeding in this suit. They further contended that the said Mugure Mahinda had not exhibited any evidence that she was the administrator of the estate of Geoffrey Wanjohi Mahinda (*deceased*). The defendants raised other grounds in opposition to the said Mugure Mahinda's application which I will however not consider at this stage.

I heard the submissions made by Mr Karanja, Learned Counsel for the defendants and Miss Njoroge Learned Counsel for the said Mugure Mahinda on the preliminary objection raised by the defendants. It was conceded by Miss Njoroge that there was no evidence on record that the said Mugure Mahinda had obtained letters of administration to administer the estate of Geoffrey Wanjohi Mahinda (*deceased*). Miss Njoroge however insisted that the said Mugure Mahinda had obtained limited grant of letters of administration to prosecute this case on behalf of the estate of the said deceased. In the absence of an annexure exhibited in the application to show that indeed the said Mugure Mahinda has letters of administration to administer the estate of the said deceased, this court has no alternative but to agree with the submission by the defendants that Mugure Mahinda has not obtained the said letters of administration.

The application filed by the said Mugure Mahinda on the 10th of February 2005 is therefore incompetent. The same was filed without any authority of the estate of the deceased.

Further, the said Mugure Mahinda did not obtain the leave of this court to be allowed to be enjoined in this suit as a plaintiff on behalf of the estate of the said deceased. The said Mugure Mahinda cannot enjoin herself as a party to this suit as if she were entering a "*matatu*". The procedure requires that she obtains the leave of this court so that she may substitute the deceased as a plaintiff in this suit.

For the said two reasons, I do find that the preliminary objection raised by the defendants has merit. I uphold the same. The application filed on the 10th of February 2005 by the said Mugure Mahinda is hereby struck out with costs. For the avoidance of doubt, I do restate that I have deliberately refrained from addressing the other issues raised in the preliminary objection as I am of the view that the said issues can properly be addressed in another forum. The two reasons stated hereinabove suffices to dispose of the application. The said Mugure Mahinda should retrace her steps and do what is required by the law before she can attempt to again move this court.

It is so ordered.

DATED at NAKURU this 13th day of May 2005.

L. KIMARU

JUDGE