

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

CIVIL CASE 79 OF 1994

DOROTHY MUNYIVA MUINDI PLAINTIFF

VERSUS

ELIZABETH SYOKWIA MUINDI DEFENDANT

RULING

Before me is the Chamber Summons dated 1/4/03 filed by Elizabeth Syokwia Muindi, the defendant herein seeking orders that the proceedings in this suit be stayed pending the hearing and determination of succession Cause No.148/94 between the same parties and that costs of the suit be provided for.

Counsel for the Plaintiff/Respondent was duly served with the Hearing Notice on 4/4/05 receiving it under protest but did not attend the hearing or sent someone to hold her brief. The court was satisfied that counsel was duly served and proceeded to hear the applicant ex parte.

The application is based on grounds found on the face of the application as well as a supporting affidavit sworn by Eliabeth Syokwia Muindi. The core of the dispute is the estate of the late Jones Muindi, who died on 28/4/88 and both the Plaintiff/Respondent and Defendant/Applicant claim to be his widows. The defendant filed Succession Cause No.148/94 for letters of succession which were issued on 10/11/94 and the Plaintiff/Respondent sought to have the said grant nullified but that application has not been heard to date. The plaintiff had filed this suit No. 79/94 seeking to distribute the deceased's estate. The matters in Succession Cause No.148/94 and H.C.C. 79/94 are substantially the same and between the same parties. It is also the applicant's contention that the plaintiff has no capacity to file this suit.

Probate and Administration Cause No.148/94 has been placed in this file H.C.C No. 79/94. The Succession Cause was filed on 7/7/94 where the applicant petitioned this court to administer the deceased's Estate. By then, this suit H.C.C. 79/94 had been filed on 22/2/94. The parties in H.C.C. 79/94 are the same as those in Probate & Administration Cause 148/94. The prayers sought in H.C.C. 79/94 were prayers for an injunction seeking to restrain the defendant from interfering with plaintiff's 20 acres within parcel of land at Lukenya Ranching Co-operative Society which forms the Estate of the late Muindi Maundu; and a declaration that the defendant held half the property of the late Maundu's Estate at Lukenya co-operative Society. Basically, the plaintiff was seeking to have the deceased's Estate distributed but it cannot be administered by a person who is not a legal representative of the deceased's Estate. The Plaintiff/Respondent was putting the house before the court and skipping procedure. No grant of letters of Administration had been issued to her and she therefore lacks capacity to bring this suit.

I do note that the Plaintiff/Respondent filed an objection to grant of Letters of Administration to the Defendant/Applicant. That should have been the cause for the Respondent to take. That would have given her capacity to file suit in the event that the objection to the grant was allowed. On the other hand, the court has no idea why the Plaintiff/Respondent opted to file H.C.C. 79/94 when she could have filed a succession Cause and gone ahead with distribution. Without capacity to sue and the fact that the suit H.C.C. 79/94 may not even be properly before court, one wonders how far the plaintiff will go with this suit H.C.C 79/94. The issue of distribution cannot be dealt with until the assets/liabilities have been determined as well as the heirs. Besides, the issue of who the administrators of the estate are has to be determined. The plaintiff's suit is in respect of only one asset. The court has no idea whether it is the only asset in respect of the deceased's Estate.

The Plaintiff/Respondent did not file any replying affidavit nor grounds of opposition. It seems there is no objection to the application and I do agree with the applicant that H.C.C 79/94 be stayed to await determination of Succession Cause 148/94 where the issues raised by the plaintiff will be determined in any event. Costs of this application to the Defendant/Applicant.

R.V. WENDOH

JUDGE

Dated at Machakos this 13th day of October 2005

Read and delivered in the presence of

R.V. WENDOH

JUDGE