

IN THE REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 526 OF 1993

WAMBUI KARIUKIPLAINTIFF

V E R S U S

KAMAU MWANGI.....DEFENDANT

R U L I N G

By Chamber Summons of 20.5.2003 the Applicant is applying to be appointed guardian ad litem on behalf of Wambui Kariuki who is said to have become insane; a stay order against orders of Deputy Registrar of 28.3.2003 and that judgement delivered by Hon. Rawal J., on 19.12.2000 be reviewed.

The application is opposed by the Respondent who says that the transaction affecting the suit premises was concluded long before the alleged mental incapacity.

This application is brought under the wrong provision. It should be under Order 31 of Civil Procedure Rules Cap 21. That rule commands the court to carry out initial enquiries to ascertain whether the person is of unsound mind or suffers from mental infirmity rendering her/him incapable of protecting her/his interest. It is said that the Court thus acts in the position of locus parentis to people who become mad. The Court must inquire and where the Court appoints a guardian ad litem, without proper inquiry, the decree passed against Defendant will be set aside.

Miss Kinuthia in opposing says the transfer was already registered before the alleged mental incapacity and that the lower Court dismissed a similar application but it must be noted that in mental incapacity case, res judicata does not apply on a contract with a mad person is void and although in this case the Court can investigate, I do not think the Court is competent to form opinion on the mental condition of the sick person as to her mental state years back when the contract was concluded.

I direct therefore, that the person suffering from mental disorder be committed to a mental institution after an application filed in this Court for orders under Section 28(1) of the Mental Health Act Cap 248. Meanwhile, I order that no one should deal in any way as to dispose of or acquire any rights over her property. The issues in this case will remain stayed until further orders. Application under this Act be made in two (2) weeks and this case be mentioned on 20.6.2003.

Application is allowed to that extent.

No order as to costs.

DATED this 29th day of May 2003

A.I. HAYANGA

JUDGE

Read to -

Miss Kinuthia

And Mr. Osangi