



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

CIVIL CASE NO. 126 OF 2012

EUNICE NJERI MWANGI (*Suing as the Administrator of the estate of the late*

JAMES MWANGI KIRUNGO.....PLAINTIFF

VERSUS

AYA LIMITED.....DEFENDANT

RULING

The Notice of Motion dated 1st August 2018 relates to a pending suit Civil Case No. 126 of 2012, in which the Applicant/Plaintiff, one *Eunice Njeri Murangi* has sued Aya Limited as the administratrix of the Estate of the late *James Mwangi Kirungo*. In the application she urges this court to substitute her as the plaintiff, with her two daughters namely *Hannah Wangari Murangi* and *Nancy Wambui Murangi* to whom she has donated Power of Attorney. She has attached to the application, a draft amended plaint to the said effect, of which she urges this court to deem as duly filed and served.

The move is necessitated by the fact that she is an elderly lady aged 81

years old and seriously ailing and lame making her unable to travel to Eldoret for purposes of hearing of the suit. She intends, in the interest of justice to have the attorneys take up the suit in her place. There is an annexed medical report dated 19th July 2018 and a copy of the said power of Attorney.

The application is opposed by the Defendant/Respondent on the grounds that it offends the provisions of the Law of Succession Act and the power of Attorney cannot give the proposed plaintiffs the capacity to take over the prosecution of the purported suit.

I have considered the application and the submissions by both sides.

The Respondent/Defendant relied on the decision of *Kimaru J* in the Estate of KRISHAN *MUREI MAINI (Deceased) [2011] eKLR* in which he observed that:-

“It is therefore clear that when a court issues letters of administration or grants a probate of written will, such letters or grants are issued personally to the person applying to administer the estate of the deceased. The person applying for letters of administration or grant of probate cannot on his part delegate the powers granted to him by the court to someone else to administer the estate”.

The extent to which personal representatives can delegate their duties is addressed well by *Musyoka W.M* in his book “Law of Succession” Law Africa at page 246. He says:-

***“The extent to which personal representatives can delegate their duties is the same as for trustees and is governed by the Trustees Act. Under the said Act, personal representatives may employ an agent to transact any business or do any act in the administration of the estate and may remunerate such agent out of the estate. Under Section 24 of the Trustees Act, the personal representative can engage an advocate or a bank to arrange the collection of the assets of the Estate, discharge of debt and other liabilities and distribution of the Estate. It can also be used to employ an estate agent to sell land forming part of the Estate, or to engage a stockbroker to value or sell shares. The provision does not allow personal representatives to delegate any discretion in matters relating to the administration of the estate. The decision making power of the estate remains with the personal representatives and not the appointed agent. The creation of a power of attorney may lead to a delegation of decision making power.*”**

The power to administer an estate is derived from the beneficiaries of the deceased estate. If an administrator is to be allowed to delegate powers bestowed by a grant to another person or persons, it would amount to imposing to the beneficiaries an administrator who may be undesirable to them. Where an administrator is incapable of performing his or her duties due to old age, illness or otherwise, he or she can be replaced or substituted in accordance to provisions of the Law of Succession Act Cap 160 Laws of Kenya, and not by the way of creation of a power of attorney. The applicant sues in Civil Suit No. 126 of 2012 as the administratrix of the Estate of the late *James Murangi Kirungo*. In the application she intends to delegate the responsibility to *Hannah Wangari Murangi* and *Nancy Wambui Mwangi*. Other beneficiaries of the Estate may not be for the position. This may amount to imposing upon them administrators not of their choice. The law does not allow such. The application lacks merit and is hereby dismissed with costs to the Respondents.

S. M GITHINJI

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 14th day of December, 2018.

In the absence of:-

The defendant/Respondent

The Plaintiff/Applicant

And in the presence of Mr. Mwelem - Court clerk