



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT NO. 184 OF 2012

SALMA SAID SALIM

FAIZA MOHAMED SALIMPLAINTIFFS

VERSUS

FEISAL SAID SALIM

FAIZA MOHAMED SALIMDEFENDANTS

RULING

The preliminary objection is to the effect that the plaintiff herein has no locus standi to institute the suit against the Defendants.

The grounds are that in their supporting affidavit the 1st Plaintiff states that she is the legal wife of the Deceased and that it is her husband who purchased the property in question.

It is contended that it is not shown whether she had obtained letters of administration to the estate of the Deceased and if so none has been annexed to the supporting affidavit.

It is submitted that the suit is incompetent and should be struck out with costs.

The preliminary objection is opposed on the grounds that the plaintiff is a Muslim and was married to the Deceased under the Mohamedan Law.

Further that the provisions of the Law of Succession do not apply to Muslims. That there is no law in placing an obligation to a person claiming as a legal representative in a Muslim Estate to obtain letters of administration before instituting a suit because the Kadhi Court does not grant letters of administration. Counsel for the Respondent has cited the **Misc High Court Application No. 736 of 2011**. In the matter of the Estate of Said Abdalla (Deceased) where it was held that letters of administration are not a requirement in the Estate of Muslim deceased persons.

Further that the preliminary objection does not confide itself on matters of law only.

As argued by Counsel for the Respondent the issue as to whether letters of administration are required before filing this suit cannot be resolved without interrogating other material facts as to whether parties were married under the Mohamedan Law and if so whether letters of administration are required under the Mohamedan legal regime. The preliminary objection therefore does touch on matters of fact and therefore does not meet the threshold of a preliminary objection as required under the case of **Mukhisa Biscuit – Vs- Tobacco Wholesalers.**

The preliminary objection has no merit and it is dismissed with costs.

Ruling delivered dated and signed this **5th** day of **November, 2013.**

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M. MUYA

JUDGE

5TH NOVEMBER, 2013

In the presence of:-

Learned Counsel for the applicant Mr. Mwahim holding brief Hamze

Learned Counsel for the Respondent

Court clerk Mr. Musundi