



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MOMBASA**

**Civil Suit 19 of 2009**

**VIOLET MUKABI.....PLAINTIFF**

**VERSUS**

**RUTH GLAUSER.....  
.....DEFENDANT**

**RULING**

The plaintiff has brought this Chamber Summons under the provisions of Order XXXIX Rule 1 and 2 of the Civil Procedure Rules and Sections 3A and 63 (e) of the Civil Procedure Act. She seeks primarily an order restraining the defendant from moving, alienating, selling and/or disposing off or in any manner dealing with motor vehicle registration number KAS 967A pending the hearing and determination of this suit. The application, which is supported by an affidavit of the plaintiff, is based on the main grounds that the said vehicle belonged to one Alfred Glauser, now deceased, upon whom the plaintiff depended and the defendant has threatened to sell the said vehicle and leave the country for Switzerland, hence the application for an interim injunction.

In response to the application, the defendant has filed a replying affidavit sworn by her in which the averments in the supporting affidavit are denied. I have carefully considered the application and the affidavits filed. I have further given due consideration to the submissions of counsel appearing. Having done so, I take the following view of the matter. The foundation of the plaintiff's claim is that she was a dependant of the deceased. The plaintiff has averred that she lived with the deceased as man and wife from 1996 to the date he died on 24<sup>th</sup> January 2009. To buttress that averment the plaintiff has exhibited copies of receipts for rent and various photographs.

The plaintiff acknowledges that the deceased was married to the defendant who was introduced to her by the deceased and contends that the defendant knew of her intimate relationship with the deceased. In the premises, the plaintiff lays claim to the said vehicle which she states is the only known asset of the deceased in Kenya. At the trial, the plaintiff will be expected to establish that she is indeed a dependant of the deceased. However, her own averments and documents annexed to her supporting affidavit do not demonstrate the contention that she will succeed to establish that she is indeed a dependant of the deceased. She appreciates that her relationship with the deceased did not amount to a marriage. Indeed, save for her mere say so, nothing much turns on the documents she has annexed to her affidavit. All the rent receipts are in her name. No single receipt is exhibited to show any payment of any expense by the deceased. That is rather surprising in view of the plaintiff's averment that she lived with the deceased as man and wife from 1996 to 2009. No correspondence or any other form of communication expected of a couple living as man and wife for such a long time was exhibited. Nothing much also turns on the photographs annexed to the supporting affidavit. The photographs per se would not in my view advance the plaintiff's case to any extent.

As Njagi J observed, when the plaintiff's application came before him at the ex-parte stage, the plaintiff does not seem to qualify as a dependant of the deceased under Section 29 of the Law of Succession which reads as follows:-

“For the purposes of this part “dependant” means –

- a) The wife or wives or former wife or wives, and the children of the deceased whether or not maintained by the deceased immediately prior to his death.
- b) Such of the deceased's parents, step-parents, grand-parents, grand children, step-children, children whom the deceased had taken into his family as his own brothers and sisters and half brothers and half sisters as were being maintained by the deceased immediately prior to his death; and
- c) Where the deceased was a woman, her husband if he was being maintained by her immediately prior to the date of her death.”

The plaintiff would have qualified as a dependant of the deceased, if she had shown that she was a wife or former wife of the deceased. There was no marriage between the plaintiff and the deceased at any time. Indeed there couldn't be any during the subsistence of his marriage to the defendant which marriage the plaintiff freely admits. That being my view of the matter, I find and hold that the plaintiff has not established a prima facie case with a probability of success at the trial.

Strictly, I need not consider the other conditions for the grant of an interim injunction. However, if I were to consider the second condition, I would without hesitation hold that the injury the plaintiff would suffer if the injunction is denied could adequately be compensated in damages. The value of the asset claimed is known and there is no allegation that the defendant is impecunious and will not be able to pay to the plaintiff whatever her entitlement if she succeeds at the trial.

If I were to consider this application on the balance of convenience, it is my view that the same tilts against granting the injunction. The plaintiff's claim has just been lodged. The claim will still have to be resolved in a succession cause which is yet to be filed. Even when it is eventually filed, the defendant's claim as the acknowledged widow of the deceased seems unassailable. To grant the injunction sought at this stage would in effect waste the asset of the estate a happening which would not be in the interest of either party.

The upshot of my consideration of the plaintiff's application is that I decline the same. It is dismissed with costs.

Order accordingly.

DATED AND DELIVERED AT MOMBASA THIS 3<sup>RD</sup> DAY OF JUNE 2009.

**F. AZANGALALA**

**JUDGE**

Read in the presence of:-

Mr. Lumatete for the Respondent and Mr. Wameyo for the Respondent.

**F. AZANGALALA**

**JUDGE**

**3<sup>RD</sup> JUNE 2009**