



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MISCELLANEOUS CIVIL CASE NO 338 OF 1978

ATTORNEY-GENERAL.....APPELLANT

VERSUS

RACHEL WACERA KAREITHI.....RESPONDENT

JUDGMENT

This is an application brought by the Attorney-General for a declaration under the Vexatious Proceedings Act that the respondent, Rachel Wacera Kareithi, is a “vexatious litigant” within the meaning of section 2(1) of the Act, and for an order that she be restrained from continuing without the leave of the court the prosecution of any litigation which she may have instituted prior to the granting of such declaration. As originally framed, the application was for an order that no legal proceedings should, without leave of the court or a judge thereof, be instituted by the respondent in any Court and that any legal proceedings already instituted by her should not be continued without leave; but the application was amended to its present form pursuant to an order dated 2nd February 1979.

It appears that the respondent is the widow of Peterson Munuhe Kareithi, who died in September 1977, a citizen of this country and domiciled here. He was survived by his widow and five children, the elder three of whom are of full age and the younger two are aged about fifteen and eight years, respectively. It is not known with certainty whether he died testate or intestate; but the respondent and the two elder children have given their consent in writing to the Public Trustee administering the estate. Notice of his intention to apply for a grant of representation was published in the *Gazette* of 11th November 1977.

Since the death of the deceased the respondent has filed a number of suits in this Court, the effect of which the Public Trustee has found to be embarrassing to him in his efforts to protect the deceased’s estate pending the obtaining by him of a grant. These suits are as follows: (a) civil case 1714 of 1978, in which the respondent seeks an account as against the applicant and twelve other persons, together with a firm of advocates and a bookshop ; (b) Civil Case No 1870 of 1978, in which she seeks similar relief against three of the defendants named in the earlier suit and based apparently upon the same facts ; (c) Civil Case No 2129 of 1978 in which the respondent seeks, as against F T Nyammo, possession of premises stated to have been the property of the respondent and her deceased husband ; (d) Civil Case No 2217 of 1979 in which the respondent claims damages under the Fatal Accidents Act against Juma Wachira, and the East African Overland Transport Co Ltd; and (e) Civil Case No 2426 of 1978 in which the respondent purports to claim as against five defendants (including the firm of advocates referred to at head (a) above) a variety of reliefs.

In each of these suits (other than Civil Case No 2217 of 1979) the complaints appear to have been drafted by the respondent without legal assistance. In Civil Case No 1714 of 1978 the names of four of the defendants, that is to say the Attorney-General and three members of the staff of the Public Trustee’s office at Nairobi, were struck out of the proceedings in that suit on the ground that the joining of them as

defendants had been an abuse of the process of the court, vexatious and frivolous, and that the plaintiff had not disclosed any cause of action against them.

The Attorney-General in an affidavit sworn on 7th December 1978 has stated that the respondent has unduly interfered with the administration by the Public Trustee of the deceased's estate without her having applied for or been granted letters of administration, and he applies for the relief claimed in the motion.

The Public Trustee in an affidavit filed on 25th January 1979 supports the motion and states, giving his reasons, that the respondent by her conduct has made it practically impossible for him to discharge his duties in regard to the administration of the estate of the deceased.

In addition, an affidavit in support of the motion was sworn and filed by Mr P K Muite, an advocate and one of the defendants named in both Civil Case No 1714 of 1978 and Civil Case No 2426 of 1978.

In opposition to the present motion and in reply to the affidavits filed in support of it, the respondent filed or lodged in Court a number of lengthy and somewhat abrasive affidavits and statements; the most recent of which (filed on 13th June 1979) contains several irresponsible suggestions and allegations which, had I been asked to do so, I would order to be expunged. Having heard both counsel for the applicant and the respondent in person (who preferred to appear without legal representation) I am satisfied that, although the number of separate suits involved is not great, the manner in which she has instituted and conducted several of those to which I have referred is such that the respondent is, and should be declared, a vexatious litigant for the purpose of the Act; and it is so ordered.

A difficulty arises, however, in regard to the relief claimed in the second portion of the motion, which is that the Court in the exercise of its inherent jurisdiction should make an order restraining the respondent from continuing without the leave of the court the prosecution of any of the suits which she may have already instituted. The Act gives the Court no such express power and it is necessary to consider whether such a power can be said to vest in the Court by virtue of its inherent jurisdiction.

Section 2(1) of the Act enables the Court, if satisfied that a person has habitually and persistently and without any reasonable ground instituted what the Act terms "vexatious proceedings" and after hearing or affording him an opportunity of being heard, to make an order declaring that person to be a vexatious litigant. Section 3 provides:

No suit shall, except with leave of the High Court or of a judge thereof, be instituted by or on behalf of a vexatious litigant in any Court, and such leave shall not be given unless the Court or the judge is satisfied that the suit is not an abuse of the process of the court and that there is a *prima facie* ground for the suit.

The effect of section 3 is to preclude the present respondent, having been declared to be a vexatious litigant, from instituting any further suits without leave of the court; and the question is whether, in addition to its powers under the section, the Court can impose a similar injunction upon her in regard to any of the existing suits?

Counsel for the applicant has referred to the decision of Lucie-Smith acting CJ in *Olivia da Ritta Siqueira E Facho v Siqueira*, [1933] 15 KLR 34, where it was held that under its inherent jurisdiction this Court had power *ex debito justitiae* to grant a temporary stay of execution of a decree pending an appeal to the Court of Appeal; but such a stay is very different from the order which is sought here. Sections 2(1) and 3 of the Vexatious Proceedings Act closely resemble section 51(1) of the Supreme Court of Judicature (Consolidation) Act 1925 of England, which was itself based on section 1 of the Vexatious Actions Act 1896. This latter section was considered in *Re Chaffers* (1897) 76 LT 351, where an order was made that no legal proceedings should *from the date of the order* be instituted by the respondent without leave. The Court was not asked to, nor did it, attempt to extend its order to existing proceedings.

Counsel also referred to *Re Langton* [1966] 3 All ER 576, where the Court of Appeal in England,

exercising its jurisdiction under the Act of 1925, in addition to restraining the appellant (who had been declared a vexatious litigant) from instituting proceedings without leave of the Court, further ordered that any Legal Proceedings already instituted in any Court before the making of the order should be not continued by him without such leave. A footnote to this report (appearing at page 578) makes it clear that this further order was made pursuant to the power contained in the amendment to that Act introduced by section (I) of the Supreme Court of Judicature (Amendment) Act 1959. I have found no instance where such an order was made or even sought under the Act of 1925 prior to this amendment; and none was referred to in argument. From this, it would appear that prior to the enactment of that amendment in 1959 there was no jurisdiction in England, either statutory or of an inherent nature, entitling the Court arbitrarily to terminate existing proceedings, for otherwise the enactment could have served no purpose. Section (I) of the English Act of 1959 has no counterpart in our legislation.

No doubt Order VI, rule 13, of the Civil Procedure Rules enables the Court at any stage of the proceedings in a suit to order any pleadings to be struck out or amended on any of the grounds set out in the rule; and to order the suit to be stayed or dismissed or judgment to be entered accordingly, as the case may be. It is clear, however, that such an order can be made only in the particular suit itself and that the Court has no power to make such an order in one suit staying or dismissing proceedings in another suit.

From this it follows that the relief sought in the second part of the notice of motion, namely that by an order in this suit the respondent be restrained from continuing without the leave of the court with the prosecution of any other suit which she may already have instituted, must be refused.

There will be no order for costs.

Order accordingly.

Dated and delivered at Nairobi this 2nd day of July 1979

L.G.E HARRIS

JUDGE