



**REPUBLIC OF KENYA**

**IN THE KADHI'S COURT AT NAIROBI**

**KIBERA LAW COURTS**

**SUCCESSION CAUSE NO 13 OF 2014**

**ABDALLAH RAMADHAN.....PLAINTIFF**

**VERSUS**

**HAAWA MOHAMMED.....DEFENDANT**

**RULING**

It's evident from the original plaint/petition dated 13th August, 2014 that the suit intended herein by Plaintiff/Petitioner is seeking "Grant change of administration from the defendants' (SIC) and any other remedy the court may deem just.

On 13th August, the Applicant/Plaintiff filed Notice of Motion under certificate of urgency seeking for the following orders.

1. **THAT** the notice to be certified as urgent and heard ex-parte as the first instance.
2. **THAT** the defendant herein be restricted by herself, her agent/or her servants from dealing with the suit property No. 20 and 23 situate at Kibera pending the hearing and determination of the application.
3. **THAT** the entire rental proceedings of plot number 20 and 23 situate to Kibera be deposited at Co-operative Bank – Kibera Branch account number [Particulars withheld]. Account name Abdallah Ramadhani and Hawa Mohammed pending the hearing and determination of this application.
4. That the court grants any other remedy that it may deem fit.

On 15th August, 2015 the prayers were granted by the trial court in terms of prayer 1, 2 and 3 respectively. On 2nd February, 2015 both counsel respectively agreed to dispose off the suit by way of a written submissions.

I don't have to expend unnecessary energy and time on factual situations and or the content of the pleading.

Unfortunately the plaint was poorly drafted and the plaintiff sought an account of the estate, which according to him is not being collected by the administrator of the estate but it is rather going to a third party, of which the prayer is not captured by the pleading.

According to the respondent the petition filed by the petitioner on 15th August 2014 does not stress on any prayer and remedy sought, and therefore the petitioner cannot pray for the remedies by way of submissions.

On the part of the petitioner, the respondent has only attacked the petition as being incompetent and fatally defective without particularization and termed the attack by the respondent as diversionary with no base. Thus, he asked the court to ignore the baseless averments and grant the order prayed for by the petitioner.

I have due considered to the submissions of the learned counsels.

In **D.T. DOBIE & COMPANY (KENYA) LIMITED V. Muchina** (1982) KLR.

In the dictam of Madan JA wherein it is stated that:

***"The court ought to act very cautiously and carefully and consider all facts of the case without embarking upon a trial thereof, before dismissing a case for not disclosing a reasonable cause of action or being otherwise an abuse of the process of the court. At this stage the court ought not to deal with any merits of the case for that 'is a function solely reserved for the judge at the trial as the court itself is not usually fully informed so as to deal with the merits 'without discovery, without oral evidence tested by cross-examination in the ordinary way". (Sellers, L.J. (supra)).As far as possible, indeed not at all, there should be no opinions expressed upon the application which may prejudice the fair trial of the action or make it uncomfortable or restrict the freedom of the trial judge in disposing of the case in the way he thinks it right.***

And late in his Judgment:

***"No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.***

There is no doubt that the petitioner's pleadings doesn't stress on any prayer and remedy sought, thus the petitioner's main - seeking an account - prayer cannot be under the garb of any other relief which essential doesn't fall under the auxiliary claims.

In the premises;

- (a) I will preserve the suit by giving the plaintiff a chance to amend in exercise of the court's inherent power and allow the case to be determined on merit.
- (b) Arising from (a) the order granted by this court vide interim order dated 13<sup>th</sup> August,2014 is still in force pending the hearing and determination of this suit.
- (c) The defendant to appear in person before this court to show cause why she has failed to abide by interim orders.
- (d) Matter is set for mention on 30th April 2015.

**Dated delivered and signed on this 17th day of April,2015.**

**A.I. HUSSEIN - KADHI**

**KIBERA LAW COURTS**