



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 256 OF 2017

MIRIAM RAJAB suing thro'

JOHN NCHIROINE KONCHELLAH.....PLAINTIFF

-VERSUS-

ERICK KIPEN KONCHELLAH.....1ST DEFENDANT

PATRICK KONCHELLAH.....2ND DEFENDANT

FELIX KONCHELLAH.....3RD DEFENDANT

EMMANUEL LEINA TASUR.....4TH DEFENDANT

RULING

The Application before me is the Defendants Notice of Motion dated 23rd November, 2017 and brought under the provisions of Section 1A,1B of the Civil Procedure Act and order 2 Rule 15 (1) (b), (c) of the Civil Procedure Rule seeking to strike out the suit. The Application was based on the grounds that the Plaintiff lacks the locus standi to bring the suit as she is neither an administrator nor a beneficiary of the estate of John Konchellah.

The Applicant further relies on the grounds that the plaintiff has obtained interim letters of administration fraudulently knowing that there is a Succession Cause No. 314 of 1994 where the 1st Defendant is the administrator and that the plaintiff has not shown any evidence that she is the daughter-in-law of the deceased.

The Application was supported by the Affidavit of the 4th Defendant where he depones that he is aware that the estate of the late John Nchiroine Konchellah has been fully administered and the process concluded in Nairobi High Court Succession Cause No. 314 of 1994 where letters of administration was issued to Lawrence Konchellah and the 1st Defendant and that the grant ad litem issue in Narok is fraudulent.

The Applicant further averred that the Respondent is neither a beneficiary nor administrator of the estate of the deceased and if she had any claim she should have brought her claims under the succession cause.

Lastly the applicant contends that the court lacks jurisdiction to hear a succession dispute.

The application was opposed by the Plaintiff/Respondent by way of a replying affidavit where the respondent avers that she is the sister in law to the 1st to 3rd Defendants as she was the wife of Edward Konchellah who is deceased and that the Defendants sold her late husband's share.

The Respondent further averred that she filed for interim letter of administration ad litem in Narok to bring the instant suit since Nairobi Succession Cause No. 314 of 1994 was concluded and thus she has the requisite locus.

I have read the application before me and heard submissions which were made by counsel for the parties and the issue for determination is whether the plaintiff has locus standi to file and convenience locus standi in the capacity that clothes a litigant with necessary ability to either convenience or defend a suit. It is the applicant's contention that the plaintiff claims is based on the grounds that she was married to the deceased and that since the Defendants had obtained letters of administration for the estate of her husband in Nairobi Succession she filed a fresh application at Narok to obtain interim letters a fact which is contained in her replying affidavit.

The respondent has not stated why she has not applied to the court that made the grant to the defendant to either stake her claim or set aside the grant for representation. From the affidavit the plaintiff obtained the grant on 25th July, 2017 while the defendant obtained a confirmed grant on 24th March, 1994.

Whereas am a live to the fact that this is an Environment and Land Court and not the Family Court my observations are based on the evidence and am not determining whether the plaintiff had a share to the estate of the deceased furthermore the claim in the substantive suit is in respect of land which is dominant cause of action that the court has jurisdiction over.

From the pleadings and submissions before me, I find that the plaintiff having obtained interim letters of administration in respect of an estate in which a competent court has confirmed a grant is unprocedural and in view of the above, I find that the plaintiff lacks the requisite capacity to institute the substantive suit and for that reason, I strike out the suit with costs to the defendants.

DATED, SIGNED and DELIVERED in open court at NAROK on this 28th day of September, 2018

Mohammed Noor Kullow

Judge

28/9/18

In the presence of:-

Masikonde holding brief for Morintat for the Defendant

N/A for the respondent

CA:Chuma