



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENT AND LAND COURT
CIVIL CASE NO. 1254 OF 2013

TERESIA WAITHIRA K. NJUGUNA PLAINTIFF/APPLICANT

VERSUS

1. JOHN OTIENO NYANDEW

2. THE COUNTY GOVERNMENT OF NAIROBIDEFENDANTS/RESPONDENTS

R U L I N G

The Plaintiff herein **Teresia Waithira K. Njuguna** (suing as the Administratrix of the Estate of **Gideon Njuguna Richu** alias **Richard Njuguna Richu** filed an application dated 17th October 2013 seeking for temporary injunction to restrain the 1st Defendant/Respondent, his servants or agents from entering, trespassing or erecting structure or interfering with all that parcel of land known as **Plot No. 3/35 Soweto Squatters Resettlement Scheme Phase II**.

The application was opposed by the 1st Defendant, **John Otieno Nyadew** who alleged that he is the bonafide proprietor of the suit property **Plot No. 3/35 Kayole Soweto** having purchased the same for Kshs. 350,000/= from one **SELINA DUMA WESONGA** on 31st December 2010 and who had been allocated the said plot way back in 1990 as per annexures JON 1 (a)(b) and (c). The 1st Respondent further raised a Preliminary Objection to the effect that:-

“the suit and the application have been filed by a non-existent entity unknown to the law and incapable of suing or being sued”.

The Court directed that the parties dispose of the Preliminary Objection first and thus this ruling.

Parties also canvassed the Preliminary Objection by way of written submissions which I have carefully considered.

The 1st Defendant in its submission stated the Deceased herein died on 12th September 2007 and the applicant herein is allegedly the Administratrix of the Estate of **Gideon Njuguna Richu**. Further, that the Plaintiff/Applicant allegedly obtained a **Certificate of Confirmation of Grant** on 12th July 2011, when the ownership of the suit property was allegedly settled once and for all.

The 1st Respondent further submitted that on 29th November 2013, he filed an application dated 19th November 2013 seeking to revoke the purportedly obtained Grant by the Plaintiff/Applicant in

Succession Cause No. 2166 of 2009. It was also his contention and submission that the applicant's right to institute suit against the 1st Defendant automatically ended on confirmation of Grant and adoption of consent on mode of distribution of the Estate of the deceased by the court. It was his further submissions that the office of the administrator, for purpose of filing suit ceases automatically once a final order of confirmation in Probate proceedings is made. He relied on **Halsbury Law of England/ Executions and Administrations (Vol. 17 Fd (REISSUE) Determination of Probate.**

On her part, the Plaintiff/Applicant submitted that the Preliminary Objection has no merit at all. It was submitted that a Preliminary Objection should not be filed for the sake of it and it should raise an important point of law which does not require any factual arguments.

Further, it was submitted that indeed, the Plaintiff is the widow and Administratrix of the Estate of her Deceased husband, **Gideon Njuguna Richu** alias **Richard Njuguna Richu** and she is not a non-existent entity who is unknown to the law.

Furthermore, the Plaintiff is allegedly empowered by the Grant of Letters of Administration and Certificate of Confirmation of Grant which are unlimited. It was here contention that mandate to sue fully commences when the personal representative is granted both the Grant of Letters of Administration and the Certificate of Confirmation of Grant. The Plaintiff therefore submitted that the right to institute a suit by the administrator did not automatically end until confirmation on Grant.

I have now considered the rival submissions. I have first to determine whether what the 1st Defendant has raised qualifies to be a Preliminary Objection. In the case of **Mukisa Biscuits Manufacturing Ltd vs. West End Distributors Ltd., Civil Appeal No. 9 of 1969 (1969) EA 696**, the Court held that:-

“A Preliminary Objection consists of a point of law which has been pleaded and which arises from a clear implication out of pleadings; and which if argued as a preliminary point may dispose of the suit Further it was held “A Preliminary Objection” is in the nature of what used to be called a demurrer It raises pure points of law which is argued on the assumption that all the facts pleaded are correct. It cannot be raised if any fact has to be ascertained and if what is sought is exercise of judicial discretion”.

The 1st Respondent/Defendant has averred that *the suit and the application have been filed by a non-existent entity unknown to the law and incapable of suing or being sued.*

The issue raised by the 1st Defendant is to the effect that the Plaintiff has no capacity to bring this suit or locus standi.

Locus standi signifies the right to be heard. A person must have a sufficiency of interest to sustain his standing to sue in a court of law. I see **BV Law society of Kenya vs Commissioner of Lands and Others, Nakuru High Court, Civil Case No. 464 of 2000.**

If a party has no locus standi, then the said party cannot bring a suit to court. The issue of locus standi goes to the root of any suit and the said issue of locus standi is a point of law which is capable of disposing of a matter preliminarily.

The Preliminary Objection raised by the 1st Defendant raises pure point of law and therefore meets the test in **Mukisa Biscuits** case (supra).

I will now have to consider whether the Preliminary Objection is merited or not.

There is no doubt that the Plaintiff herein is the widow and administratrix of the Estate of **Gideon Njuguna Richu** alias **Richard Njuguna Richu**. The duties of the personal representative are given in **Section 82** of the *Law of Succession Cap 160 Laws of Kenya* as:-

“Personal Representatives shall subject to only any limitation imposed by their grant have the following powers:

a) To enforce the suit or otherwise all cause of action which by virtue of any law survives the deceased and arise out of his Death for his estate

The 1st Defendant submitted that the Plaintiff right to bring any suit on behalf of the Estate of the deceased cased and ended when the Grant was confirmed and consent of distribution of the Estate was done. However, the 1st Defendant did not cite any authority to support his submissions.

Further, I have considered **Section 83** of the *Law of Succession Act* which stipulates the further duties of the Administrator of the Estate. **Section 83 (1)**.

“To complete the administration of the estate in respect of all matters than continuing trust and if required by the court either of its own motion on the application of any interested party in the Estate to produce to the court a full and accurate account of the completed administration”.

The Plaintiff, as the administratrix of the Estate of her deceased husband Is supposed to complete the Administration of the Estate by producing in Court a correct the accurate account of the completed administration. That is the only time that the Estate can be wound up. There is no evidence that the Estate has been would up. The Plaintiff is therefore still the administratrix of the deceased Estate bestowed with the powers to bring any suit on behalf of the Estate as stipulated by **Section 82** of the *Law of succession Act*.

Again, the 1st Defendant submitted that on 29th November 2013, he filed an application to revoke the Grant obtained by the Plaintiff in **Succession Cause No. 2166 of 2009**. Though the 1st Defendant has a right to file the said application as provided by **Section 76** of *Cap 160 Laws of Kenya*, there is no evidence that the said Grant has been revoked. Since the Grant has not been revoked, the Plaintiff is still the administratrix of the Estate of the deceased and as I stated earlier she has the power and duties bestowed on her by **Sections 82 and 83** of the *Cap 160 Laws of Kenya*.

The Plaintiff therefore has capacity on **locus stand** to bring this suit.

In the case of **Inland Revenue Commissioners vs. National Federation of Self Employed and Small Business Limited (1984) 2 WLR 722 – 723**.

“ It was held that, the term locus stand means a right to appear in court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings”.

The Plaintiff is the administratrix of the Estate of the deceased herein who was her husband. She has therefore shown that she has an interest in the subject matter and her interest may be prejudiced or is about to be prejudiced and thus this suit.

Therefore from the foregoing, it is my considered view that the Preliminary Objection as raised by the 1st Defendant is not merited. The same is hereby dismissed entirely with costs to the Plaintiff/Applicant.

It is so ordered.

Dated, Signed and delivered this 20th day of February 2015.

L. GACHERU

JUDGE

Court:

Ruling read in open Court

In the presence of :-

Mr Waithaka holding brief for Gitau for the Plaintiff

None attendance for the Respondent

L. GACHERU

JUDGE