



SWAZILAND HIGH COURT

The Administrator- Estate of the Late David Harry Muir
Plaintiff

v

Winnie Muir (bHoward)
First Defendant

Estate Late Martin Robert Muir
Second Defendant

Case No 1884/99

Coram

SAPIRE, CJ

For Plaintiff
For Defendant

Mr. Shilubane
Mr. Flynn

JUDGMENT
(31/05/2000)

The plaintiff has sued the defendants claiming damages as compensation for loss of estate property by fire. This is an exception to the summons. The point raised is that the allegations in the summons do not support the plaintiff's *locus standi in judicio*. The merits of the matter are not material.

The property was owned by the Late David Harry Muir. The plaintiff alleges in the summons that he, Patrick Norman Muir, is "in his capacity aforesaid" the registered owner of the property. He claims to be the Administrator of the estate by virtue of letters of administration issued to him by the Master of the High Court.

In terms of the will of the late D H Muir, a copy of which is attached to the summons Barclays Bank D C O is the executor and administrator of the estate.

The Master of the High Court has no statutory or other power to appoint an administrator (as opposed to an executor) of an estate, let alone an individual other than the person nominated in the will. It is the will which creates the trust of which the administrator is the trustee.

Excipient's point is well taken . But for the allegation that the plaintiff is the registered owner of the property, albeit in a representative capacity, I would have no difficulty in upholding the exception. Although both sides have made reference to facts not alleged in the particulars of claim, no account is to be taken of them in deciding on the exception. On the other hand the deed of transfer in terms of which the Plaintiff claims to be the owner of the property, a copy of which is attached to the particulars of claim, makes no mention of his name or the name of any other individual or person, and refers only to the office of administrator of the estate. In terms of the will it is Barclays Bank is appointed to that office. There is nothing to show that Patrick Norman Muir has been validly appointed to act as administrator and trustee. Instead of the bank

I uphold the exception with costs of both defendants. The Plaintiff may, amend the summons within seven days if there are facts which can be stated to demonstrate the validity of his appointment.. Failing this the case is dismissed.


S W Sapire CJ