



REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
SUCCESSION CAUSE NO.56 OF 2015

IN THE MATTER OF THE ESTATE OF SAWE ARAP SUWON (DECEASED)

RECHO LANGAT.....BENEFICIARY/APPLICANT

VERSUS

BARNABAS LANGAT.....1ST PETITIONER

ALEXANDER LANGAT.....2ND PETITIONER

JOSPHAT KORIR.....3RD PETITIONER

ESTHER SIWON.....4TH PETITIONER

RULING

1. The Application coming for consideration is the one dated 30/7/2018 seeking for orders that the 1st, 2nd, 3rd and 4th Respondents be restrained by a temporary injunction from interfering with the rightful portion of two Acres of the Beneficiary/Applicant's share on LR NO KERICHO/KYOKONG/236 pending the hearing and determination of the summons for confirmation herein.
2. The Application is supported by the Affidavit of the Applicant dated 30/7/2018 in which she has deposed that she is the daughter-in-law to the deceased having been married to the son the deceased by name STANLEY LANGAT (deceased).
3. The Applicant further stated that a grant of letters of administration was issued to the petitioners herein on 29/7/2015.
4. Further that on 26/7/2018 the 1st Respondent encroached on her portion of land measuring two Acres and exercised approximately one Acre which contains her homestead and toilet and that he had sold the land to the 3rd and 4th Respondents who are not beneficiaries of the Estate.
5. The 2nd Petitioner/Respondent filed a Replying Affidavit dated 17/9/2018 in response to the Application dated 30/7/2018 in which he stated that the deceased who was his father left the following beneficiaries:

1st House

- a) Recho Langat – Daughter-in-law

b) Barnabas Langat – Son

c) Alfred Langat – Son

2nd House

a) Esther Siwon – Widow

b) Alexander Langat – Son

c) Nelson Langat – Son

d) Cheruiyot Siwon – Son

e) David Langat – Son

f) Leonard Kiprono Langat – Son

g) Charles Langat – Son

h) Sammy Langat – Son

i) Kenneth Sitonik – Son

j) Kibet Sitonik - Son

6. The 2nd petitioner also stated that the 1st petitioner sold 0.8 Acres of his land to the 3rd Respondent to pay hospital bills for his wife and school fees for his children and likewise the 3rd Respondent sold 0.2 Acres to the 3rd Respondent to purchase a cow.

7. He further stated in the said Affidavit that a family meeting was held and a surveyor was subsequently called to partition the land. He denied having encroached on the Applicant's land or having intermeddled with the Estate.

8. The parties filed written submissions which I have duly considered. The issues for determination are as follows:

i) Whether the Respondents have intermeddled with the Estate of the deceased.

ii) Whether the Applicant is entitled to the injunction she is seeking.

iii) Who pays the costs of this Application?

9. On the issue of intermeddling, I find that the Respondents have no mandate to sell the property before confirmation of grant. Section 82 (b) of the Law of Succession Act provides thus:

“No immovable property shall be sold before confirmation of grant”.

10. The petitioners are dealing with the property in a manner that amounts to intermeddling since the grant has not been confirmed and yet they have sold the properties to 3rd parties. That is contrary to the law. Section 45 (1) of the Law of Succession Act forbids any person from inter meddling with the property of a deceased person as follows:

“Except so far as expressly authorized by this Act, or by any Written Law or by a grant of representation under this Act no person shall for any purpose take possession or dispose off

or otherwise meddle with any free property of a deceased person”.

11. I also find that the Applicant has established the grounds for grant of an injunction.

12. The conditions for consideration in granting an injunction are now well settled in the case of **Giella vs Cassman Brown & Company Limited (1973) E A 358**, where the court expressed itself on the conditions that a party must satisfy for the court to grant an interlocutory injunction as follows:-

"First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the Court is in doubt, it will decide an application on the balance of convenience."

13. I find that the Applicant will suffer irreparably unless the injunction is granted.

14. I accordingly allow the application in the following terms:

i) THAT the Respondents are hereby restrained from surveying, partitioning, selling or leasing any part of the Estate until the grant is confirmed.

ii) THAT the petitioners are directed to file a summons for confirmation within 30 days of this date.

iii) THAT the Respondents to pay the costs of this Application.

Delivered, dated and signed at Bomet this 3rd day of August 2020.

A. N. ONGERI

JUDGE