



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

SUCCESSION CAUSE NO. 72 OF 2003

IN THE MATTER OF THE ESTATE OF THE LATE CHERUGUT SAKONG - (DECEASED)

CLAUDIA SAKONG.....1ST APPLICANT

COLLINS CHESUMBA SAKONG.....2ND APPLICANT

VERSES

RONALD MATUI.....1ST RESPONDENT

GODFREY KIMTAL.....2ND RESPONDENT

RULING

1. The Summons by the Applicants dated 8th June 2020 pray for the orders of injunction to restrain the Respondents from interfering with the portion occupied by the Applicants in Land Parcel number **Elgon/Kaptama/53** and that there be stay of execution of the Certificate of Confirmation of Grant issued by this court on 3rd April 2019 pending the determination of this application and the application dated 7th May 2019.
2. The application is supported by the affidavit of **Collins Chesumba Sakong** sworn on the even date. The Applicant has deponed that the Respondents on the 22nd May 2020 sprayed herbicides on their entire crops and he did exhibit the photos showing the extent of the destruction. The Applicant has also deponed that on the 1st of June 2020, the Respondents destroyed their house and there are photos to that effect.
3. The Applicant thus asks this court to stop the Respondent from causing them untold sufferings as they await the determination of their application dated 7th May 2020.
4. The Respondent through the affidavit of **Ronald Matui**, sworn on 15th June 2020 has denied the applicants averments and instead blamed them for instigating trouble in the estate. He said that they have carried out the subdivision of the land as per the grant from this court. He blamed the Applicants from attempting to evict her sisters from the suit land. He exhibited police warrants from Kaptama police station in which they sought to arrest the Applicants.
5. He went on to state that the application is meant to cover up the Applicant's ills which they have committed. He argued that there was no report from the Agricultural Officer indicating the extent of the damage.
6. He further deponed that the Applicant's application dated 7th May 2019 has never been prosecuted and this court should not grant the orders based on the said application.
7. In his further affidavit the dated 30th June 2020, the Applicant has attached copies of the report from the office of the Ministry of Agriculture showing the extent of the damaged crops. He also denied that a survey work has been undertaken on the property as alleged by the Respondents.
8. The court ordered the parties to file written submissions which they complied and the court has perused the same. The Applicant submitted that the application is merited for the Applicant has met the threshold in the case of **GIELLA VS. CASSMAN BROWN CO. LTD. (1973) E A 358**. In other words, all the three ingredients for the grant of injunction have been met.

9. The Respondent on the other hand submitted that this court is *functus officio* as far as the matter is concerned and that the only recourse is for the Applicants to approach the land court. In essence once the grant was confirmed and issued any other issue the parties litigate over must be dealt with by a court of competent jurisdiction but not this court.

10. This matter was essentially concluded when the grant was confirmed on the 3rd April 2019. The said grant is still subsisting to date. The application by the application dated 7th May 2019 is still pending. The same is seeking to review the judgement and the decree of this court. To the extent that the same is pending and has not been determined this court cannot be asked to comment on it.

11. The court however agrees with the Respondent that it does not have much jurisdiction to adjudicate over the alleged destruction of the Applicant's property by the Respondent or any other party. That is the preserve of the Lands court or other forum but not under the auspices of the Succession court. This is for the simple reason that having determine the entitlement of the beneficiaries as per the confirmed grant it is upon them to move forward and call in the Surveyors and other relevant agencies to finalise the process.

12. The destruction of the Applicant's property if true is a criminal offence and thus it needs a criminal processes and sanctions. At the same time the Land and Environment court can still be approached so as to grant the necessary reliefs including compensation if need be.

13. For the above reason, this court by virtue of the limited jurisdiction it has namely determining the entitlement of the beneficiaries which it has already done, is bereft of the necessary jurisdiction. This court shall only deal with matters which directly affect the question of the confirmed grant but it must be moved to act. The court cannot therefore stop the enforcement of the grant. Such enforcement, parties must be reminded must be done lawfully.

14. In fact, nowhere has the decision of this court ordered the destructions of any of the beneficiaries' property or forceful eviction. Any action that uses threats and intimidation or destruction of property illegally must be opposed in a proper legal forum.

15. For the said above reasons, the application is denied. The Applicant however is free to move to the court with proper jurisdiction.

16. Each party shall meet their respective costs.

Dated, Signed and delivered at Kitale this 28th day of October 2020.

H. K. CHEMITEI

JUDGE

28/10/2020