



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

SUCCESSION CAUSE NO. 616 OF 2015

IN THE MATTER OF THE ESTATE OF

IMBIAKHA MUKA.....DECEASED

JAPHETHER MBAKAYA IMBIAKHA.....1ST PETITIONER

VERSUS

RICHARD MUKA IMBIAKHA.....RESPONDENT

AND

JACOB WANJALA WERE.....INTERESTED PARTY/APPLICANT

R U L I N G

1. On the 7th December 2016, this court confirmed the distribution of the estate of the deceased herein **LR Kakamega/Malava/1540** as follows:

- (a) Richard Muka Imbiakha(the respondent herein) 2.7 acres
- (b) Japhether Mbakaya Imbiakha (the petitioner) 2.7 acres
- (c) Isaaya Kulecho Indechi Nil
- (d) Jesca Nafula Mikobi Nil
- (e) Jacob Wafula Were (the interested party) 1.25 acres

2. Richard Muka Imbiakha who was one of the original petitioners was dissatisfied with the manner the estate was distributed. He filed summons for revocation of grant which are undated but were filed in court on 6th March 2017. Thereafter the interested party herein, **Jacob Wanjala Were** filed an application dated 6th June 2018 seeking for orders that:-

- 1. Spent.**
- 2. Pending the hearing and determination of this application status quo be maintained pending distribution of the deceased's estate.**
- 3. The 2nd petitioner/respondent Richard Muka Imbiakha be restrained from interfering with the interested party's peaceful use and occupation of LR Kakamega/Malava/1540.**
- 4. Costs of this application be in the cause.**

3. The application was premised on the grounds that the interested party had bought the beneficial share of one Isaac Kulecho Indechi from the estate of the deceased. That he has been in occupation of the land he bought since the year 2014. That the respondent herein has threatened to uproot his sugarcane plantation, crops and fence from his parcel of land. That the applicant will suffer irreparable loss and damage unless this court issues injunctive orders against the respondent.

The applicant listed among his documents a land sale agreement between him and Isaac Kulejo Indeche dated 18th December 2018.

4. The application dated 6th June 2018 was opposed by the respondent Richard Muka Imbiakha through his replying affidavit in which he depones that he is a son of the deceased herein and therefore one of the beneficiaries to his estate. That the interested party/applicant is not among the beneficiaries to his estate. That the interested party/applicant is not among the beneficiaries of the estate of the deceased neither does he have a beneficial share in the estate as none of the beneficiaries sold the alleged portion of land to him. That Isaac Kulecho Indeche is not a beneficiary to the estate of the deceased in land parcel Kakamega/Malava/1540 and therefore that he cannot purport to have purchased a portion of the land parcel from the said person who is a stranger to the estate of the deceased. That the interested party has trespassed and/or encroached into the respondent's portion of land in the estate of the deceased. That the interested party and the petitioner herein have colluded to defraud him of his share of the estate of the deceased. He denied that he has threatened to uproot sugarcane and other crops the interested party has cultivated on the estate. He urged the court to dismiss the application.

5. The respondent was represented by **Mr. Manyoni, Advocate**. The applicant was not represented. Mr. Manyoni submitted that the applicant is a stranger to the estate. That he should wait for the succession proceedings to be completed and claim from the person who sold him the land. That the petitioner has not sought to be enjoined in the succession cause. The advocate said that the application is misconceived and should be dismissed.

6. The applicant on his part stated that he is a purchaser for value. He asked the court to grant him the prayers sought.

Analysis and Determination

7. The applicant is seeking that the respondent be restrained from interfering with his peaceful use and occupation of the suitland pending distribution of the deceased's estate. He contends that he is a purchaser for value from one Isaac Kulejo Indeche who was a son to the deceased.

8. The court has studied the court file and noted that **Isaac Kulejo(Kulecho) Indeche** was named in the chief's letter as one of the sons and beneficiaries of the deceased's estate. He was also named as a son of the deceased in the P & A forms filed by the petitioners, one of the Petitioners of whom was the respondent herein. The respondent now contends that the said Isaac Kulejo Indeche is a stranger to the estate of the deceased. The burden is on him to prove that the said person is a stranger to the estate of the deceased.

9. The principles under which a court may grant an order of injunction were set out in **Giella Vs Cassman Brown & Company Limited**(1973) E.A 358 at page 360 where it was held that:-

“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 on the application on the balance of convenience.”

10. The applicant herein contends that he bought the contested parcel of land from a beneficiary of the estate. He has annexed the sale agreement. There is already a confirmed grant that the respondent is seeking that it be revoked. The respondent has not filed evidence to indicate how Isaac Kulejo Indeche is not a beneficiary to the estate of the deceased herein. The respondent has shown that he has a protectable interest in the estate of the deceased. He has established that he has a prima facie case with a probability of success. It is not in record that the respondent is in a position to compensate the applicant for any loss that the applicant may incur for any damage to his property that is on the estate. The ends of justice in the circumstances of the case demands that the status **quo** be maintained pending the distribution of the deceased's estate.

11. In the foregoing the court makes the following orders:-

1. The status quo as is of todate on LR No. Kakamega/Malava/1540 be maintained pending the hearing and determination of the succession cause herein.

2. The respondent Richard Muka Imbiakha is hereby restrained from interfering with the applicant/ interested party's peaceful use and occupation of his portion of land in Kakamega/Malava/1540 pending the hearing and determination of the succession cause herein.

3. Costs to be in the cause.

Delivered, dated signed and dated at Kakamega this 28th day of March 2019.

J.NJAGI

JUDGE

In the Presence of:

Mr. Manyoni.....for Respondent

Applicant.....absent

Respondent.....present

Court Assistant.....George