



Wanjala (Suing as the legal representative of the Estate of Beti Inyende (Deceased)) v Mukabana (Environment & Land Case E007 of 2023) [2023] KEELC 21710 (KLR) (21 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21710 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E007 OF 2023
DO OHUNGO, J
NOVEMBER 21, 2023**

BETWEEN

**ESTHER AMUNGA WANJALA PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF BETI
INYENDE (DECEASED)**

AND

PLATI TIMOTHY MUKABANA DEFENDANT

RULING

1. By Notice of Motion dated 14th August 2023, the plaintiff seeks an injunction to restrain the defendant or any person acting through him or on his behalf from encroaching upon, trespassing onto, alienating, laying claim to, utilizing, developing, carrying out any works on, constructing on or in any other manner dealing with the parcel of land known as Butsotso/Shibeye/215 (the suit property) and or interfering with the plaintiff's peaceful possession, occupation and use of the suit property pending hearing an determination of the suit. The plaintiff further prayed for orders that the local police, Assistant County Commissioner and Assistant Chief assist in enforcing any orders granted.
2. The application is supported by an affidavit sworn by the plaintiff. She deposed that she is the administrator of the estate of Beti Inyende (deceased) who was her brother who passed away intestate on 26th May 1971 and was survived by her and Resba Onduso, Jared who is her sister. That Beti Inyende was the registered proprietor of the suit property and held it in trust for the family. She annexed a copy of limited grant *ad litem* issued to her in respect of Beti Inyende's estate on 7th September 2022 and added that upon conducting a search in respect of the suit property she discovered that it was illegally and fraudulently transferred to Fred Aguduya s/o William Tsische in 1978 who fraudulently misrepresented himself as an heir to the estate of Beti Inyende and obtained Certificate of Succession



- dated 8th June 1977 from District Magistrate Court, Kakamega. Fred Aguduya was the defendant's father.
3. The plaintiff further deposed that in view of what she discovered, she filed Citation Cause Number E192 of 2022 against the defendant and his siblings on 5th December 2022 for them to accept or refuse letters of administration to enable her commence proceedings against the estate of Fred Aguduya s/o William Tsisiche. She went on to depose that the defendant filed an affidavit in the citation cause in which he deposed that he filed a petition for letters of administration in respect of the estate of Fred Aguduya on 1st December 2022 in HC Succession Cause Number E25 of 2022 (Kakamega). That a grant was issued to the defendant on 9th March 2023 and that she was surprised to note on the face of the grant that the defendant was to file an application for confirmation of the grant within 60 days, yet a grant is usually ripe for confirmation after expiry of six months. That she would like this court to declare that the succession proceedings that led to the transfer of the suit property to Fred Aguduya s/o William Tsisiche were irregular, fraudulent, null and void.
 4. The defendant filed a replying affidavit in which he deposed that Beti Inyende sold the suit property to one Okeno in 1967 but since Okeno was unable to finish paying the purchase price, Beti Inyende sold the suit property to his father in 1969. That since Beti Inyende did not refund the portion of the purchase price that Okeno had paid, Okeno retained 3 acres of the suit property. That Beti Inyende died before transferring the suit property and it was agreed at a meeting between the plaintiff's and defendant's families that the defendant's father obtains letters of administration in respect of the estate of Beti Inyende to get his title. The defendant further deposed that his family has been in occupation of the suit property for 53 years and that the plaintiff had filed the application in bad faith.
 5. Both parties filed supplementary affidavits whose contents I have noted. The application was canvassed through written submissions which both parties duly filed.
 6. I have considered the application, the affidavits, and the submissions. The plaintiff is seeking an interlocutory injunction. The principles applicable while considering such an application are that the applicant must establish a *prima facie* case with a probability of success. Even if he succeeds on that first limb, an injunction will not issue if damages can be an adequate compensation. Finally, if the court is in doubt as to whether damages will be an adequate compensation then the court will determine the matter on a balance of convenience. All these conditions and stages are to be applied as separate, distinct, and logical hurdles which the applicant is expected to surmount sequentially. If *prima facie* case is not established, then irreparable injury and balance of convenience need no consideration. See *Giella v Cassman Brown & Co Ltd* [1973] EA 358 and [*Nguruman Limited v Jan Bonde Nielsen & 2 Others* \[2014\] eKLR](#).
 7. The plaintiff's case is that the suit property was illegally and fraudulently transferred to Fred Aguduya in 1978. The alleged fraud and misrepresentation are said to have been committed the defendant's father presenting himself as an heir to the estate of Beti Inyende and obtaining Certificate of Succession dated 8th June 1977 from District Magistrate Court, Kakamega. I have perused the copy of register in respect of the suit property which the plaintiff annexed, and I note that the defendant's father was first registered as proprietor of the suit property on 25th April 1978 through succession. A correction of the proprietor's name to Fred Aguduya s/o William Tsisiche was registered on 28th September 1978.
 8. The dispute between the parties largely revolves around the question of whether the letters of administration in respect of Beti Inyende's estate that were issued to the defendant's father were properly and validly issued. The plaintiff maintains that they were issued fraudulently and through misrepresentation. Nothing has been offered to show if the succession court has revoked the said grant.



Needless to state, this court has no jurisdiction in matters concerning issuance and revocation of grants in respect administration of the estates of deceased persons.

9. I also note that although Beti Inyende passed away on 26th May 1971, the plaintiff obtained grant ad litem in respect of his estate only recently, on 7th September 2022. The dispute between the parties is essentially one of succession regarding administration of Beti Inyende's estate. In the absence of an order from a court with jurisdiction in succession matters revoking the grant that was issued to the defendant's father, there would be no meaningful intervention from this court at this interlocutory stage. I find that the plaintiff has failed to establish a *prima facie* case. That being so, irreparable injury and balance of convenience need no consideration.
10. I find no merit in Notice of Motion dated 14th August 2023 and I therefore dismiss it with costs to the defendant.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 21ST DAY OF NOVEMBER 2023.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

The Plaintiff present in person

The Defendant present in person

Court Assistant: E. Juma

