



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**SUCCESSION CAUSE NO. 325 OF 2013**

**TERESIA KARUANA KARIMI.....PETITIONER**

**V E R S U S**

**SUSAN MUTHONI NJIRU.....PROTESTOR/APPLICANT**

**RULING**

1. The applicant James Miano Njiru the next friend of protestor Susan Muthoni Njiru has filed an application dated 16/05/2017 seeking temporary injunction against the respondent, Paul Karimi, Peter Karimi, David Munene Mutitu, Francis Wanjohi and anyone claiming through them be restrained by way of temporary injunction from interfering with her portion of **Kabare/Gachigi/855** by plucking tea bushes, cutting trees, cultivating or any such act of waste pending hearing and determination of the cause.

2. That the respondents were aware of the portion each was occupying even before the deceased passed on and sub-divisions on the ground had already been done but new titles has not been issued. That recently the respondents started interfering with her portion by plucking tea bushes, cutting down tree and ferrying them away and committing other acts of waste.

3. The respondent filed a response stating that the applicant does not occupy **Kabare/Gachigi/855** and/or **Parcel No.38** nor does she get her livelihood from the said land as alleged. That the deceased had four daughters and each was to inherit  $1\frac{3}{4}$  acres of **Kabare/Gachigi/451**. That the applicant was a beneficiary and was wholly inherited **Kabare/Gachigi/813** measuring  $1\frac{3}{4}$  acres which she directed be registered in her son's name Francis Munene Njiru. That the applicant has inherited her portion though her sons and should let her sisters inherit their rightful shares of **Kabare/Gachigi/855**.

**4. Temporary injunction**

In deciding whether to grant the temporary injunction sought after by the Plaintiffs, I wish to refer to and rely on the precedent set out in the case of **GIELLA –V- CASSMAN BROWN (1973) EA 358** in which the conditions for the grant of an interlocutory injunction were settled as follows:

*The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally 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.*

5. The three principles that govern the grant of an injunction are:

**i. The Prima facie Case**

**ii. Balance of Convenience;**

**iii. Irreparable loss.**

6. Has the Plaintiff made out a prima facie case with a probability of success? In the case of **MRAO –V-FIRST AMERICAN BANK OF KENYA LIMITED & 2 OTHERS (2003) KLR 125**, a prima facie case was described as follows:

*A prima facie case in a Civil Application includes but is not confined to a 'genuine and arguable case'. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.*

7. It was not in dispute that the applicant is the sister of the respondent and during application for confirmation of grant, she was not given

any shares in **Kabare/Gachigi/855**.

8. The applicant claims that she is occupying her portion of **Kabare/Gachigi/855** and sought injunction to restrain the respondent from plucking of tea bushes, cutting trees, cultivating or any such act of waste. However, she did not annex any proof that she occupies the land and/ or has planted any such tea bushes or trees which were being cut. The Respondent has deponed that Land parcel No. Kabare/Gachigi/451 was closed on subdivision and resultant parcel are No. 812 & 813. The applicant was bequeathed Kabare/Gichigi/813 was registered in the names of her son Francis Munene Njiru. That Land Parcel No. Kabare/Gachigi/812 was further sub-divided and resultant parcels are No. Kabare/Gachigi/854 && 855. The land parcel No. Kabare/Gachigi/854 was bequeathed to Teresia Karuana while parcel No. Kabare/Gachigi/855 remained in the name of the deceased. This as per affidavit of Teresia Karuana Karimi. That applicant has no share in land Parcel No. Kabare/Gachigi/855.

9. The applicant is not the registered owner of parcel No. Kabare/Gichigi/855 and has not shown that she lives on the land. The respondents have shown that that the applicant has parcel No. Kabare/Gachigi/813 she has not established that she has a claim on parcel No. 855 nor has she shown that she is likely to suffer irreparable loss. She has no prima facie case with chances of success. The application is without merits and is dismissed.

**Dated at Kerugoya this 18<sup>th</sup> day of December 2018.**

**L. W. GITARI**

**JUDGE**