



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAAMEGA

SUCCESSION CAUSE NO.1200 OF 2012

IN THE MATTER OF THE ESTATE OF THE LATE MUSA NAUJO WECHULI a.k.a MUSA WEJULI NAUDO – (DECEASED)

BETTY NEKESA WECHULI.....RESPONDENT/PETITIONER

VERSUS

GIDEON NDAMBUKI WASIKE

EVERLINE WASIKE..... APPLICANTS/RESPONDENTS

RULING

1. The applicant herein *Gideon Ndambuki Wasike* has filed a Chamber Summons dated 6th February, 2017 seeking for interlocutory orders:-

(1) That pending the determination of the objection proceedings herein, sugarcane proceeds from sugarcane harvested from the estate of the late *Musa Naujo Wechuli*, the deceased herein, and delivered to Butali Sugar Mills by *Stanley Onyimbo* by tractors Nos.KTCB 900L, Trailer No.ZD4773 and KTCB 438J, ZD6810 on 4th February 2017, be deposited in court pending the hearing and final determination of the objection filed herein against the respondent/petitioner *Betty Nekesa Wechuli*.

(2) That pending the hearing of the objection herein the respondent/petitioner and her agents be restrained from interfering with the applicant's use of the portion of deceased's estate measuring 3 acres in which the applicant has been in use since 2006.

(3) That the agricultural officer to Navakholo Division do visit the disputed portion to assess the value of sugarcane destroyed by the said *Stanley Onyimbo*.

2. The application was opposed by the respondent/petitioner on the grounds that the deceased herein was her father and that she was the only child of the deceased. That the applicant has never been in occupation of the deceased's land neither was he a beneficiary to the estate of her father. That sometimes back she petitioned for grant of letters of administration of her father's estate which were issued to her on 29th July 2013 and confirmed on 18th March, 2014. That thereafter she obtained title to her father's land Parcel No. Bunyala/Namirama/848 through transmission and sub-divided it into three portions and sold two of them to *Stanley Were Onyimbo* and the other to *John Probus Nyongesa* who obtained new titles to the land. Therefore that the original title no longer exists. That the said buyers have been in occupation of their parcels of land since 2012 and 2005 respectively to the exclusion of the applicant. That the jurisdiction of this court is to deal with succession matters but since the succession proceedings have been

finalized and the parcel of land has changed hands to third parties, this court has no jurisdiction over the matter as the dispute is now over registration and ownership of the land. Therefore that the application should be struck out with costs to the respondent.

3. The respondent/petitioner annexed to her replying affidavit the new title deeds that are in the names of Stanley Were Onyimbo and John Probus Nyongesa that were issued on 13th January 2017.

4. The application was supported by the affidavit of the applicant and his further supporting affidavit in which he depones that he has been in use and occupation of land Parcel No. BunyalaNamirama/848 since 2006. That he had planted sugarcane on 3 acres of the farm. That on 3rd February 2017, one Stanley Were Onyimbo caused to be harvested the said sugarcane and were on 4th February 2017 delivered to Butali Sugar Company on tractor No. KTCB 900L, trailer ZD4773, and KTCB 438J, ZD 6810. That the said Stanley Were Onyimbo also destroyed 1 1/2 (one and a half) acres of immature sugarcane. He hence filed this application seeking for injunctive and other orders as set out above.

The applicant has a pending application in this succession cause where he is seeking to have the grant of letters of administration issued to the petitioner herein revoked. He however urged the current application separately from the application for revocation of grant.

5. I have considered the issues raised in the application and the response by the respondent. The applicant is seeking to injunct the petitioner in this succession cause, Betty Nekesa Wechuli. The respondent/petitioner however states that she has already completed the succession cause and sold the land to third parties who have been issued with new title deeds to the parcels of land she sold to them. That she is therefore not in possession of the land for which the applicant wants her to be injuncted on and more so that the title to the land the applicant is referring to no longer exists as it was extinguished upon fresh registration of the land.

6. The court record indicates that the grant of letters of administration issued to the respondent/petitioner were confirmed on 18th March, 2014. The confirmed grant shows that the land in issue was to transmit to Stanley Were Onyimbo and John P. Nyongesa.

7. It is clear that the two people to whom the land was transmitted to have already obtained new title deeds to the land and as such the original title no longer exists. The respondent/petitioner herein Betty Nekesa Wechuli is no longer the owner of the land. She is not the agent of the current owners of the land. She therefore cannot be injuncted over land which no longer belongs to her. The owners of the land are not parties to this succession cause. They therefore cannot be injuncted when the application is not directed at them.

8. The application for injunction is brought under *Rule 73* of the Probate and Administration rules. The rule states as follows:-

“Nothing in these Rules shall limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent an abuse of the process of the court.”

9. The court cannot use its inherent powers to injunct a party who is not the owner of the property being injuncted on or to injunct a person who is not a party to the suit. Moreover, the applicant has not shown that there was any abuse of the court process by the respondent.

10. In the foregoing, the court finds no basis for granting the orders sought in the application dated 6th February, 2017. The application is accordingly dismissed with costs to the respondent. The interim orders issued on 8th February, 2017 are hereby vacated.

Delivered, dated and signed at Kakamega this 28th day of March, 2017.

J. NJAGI

JUDGE

In the presence of:

Court Assistant – Paul Kahi

Osango for petitioner/respondent