



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 54 OF 2016**

**SUSAN CHEROP .....PLAINTIFF**

**VERSUS**

**AUGUSTINE PSINEN .....DEFENDANT**

**RULING**

1. The Applicant **Augustine Psinen** filed a Notice of Motion dated 29/3/2016 in which he seeks an order staying proceedings in this suit pending the hearing and determination of an application seeking to revoke the grant given to the Respondent **Susan Cherop** in Kapenguria High Court **Succession Cause No. 2 of 2015**.

2. The Respondent had filed this suit against the Applicant in her capacity as the administratrix of the estate of the late **LOMARIA KOTORUK alias PLIMO KOTORUK (deceased)**. She seeks a declaration that **LR No West Pokot/Keringet”A” /89** (suitland) belongs to the estate of the deceased and that the Applicant is a trespasser. She also seeks orders of permanent injunction and mesne profits.

3. The Applicant contends that he has filed an application seeking the revoke the grant issued to the Respondent on the ground that the Respondent is not related to the deceased and that she obtained the grant by concealing material facts. That if the proceedings are not stayed and this case proceeds, it will prejudice the Applicant who has been utilising the deceased's land together with his family since the 1960's. That it will be prejudicial to the Applicant if the proceedings herein are allowed to go before the issue of the grant is determined.

4. The Respondent has opposed the Applicant's application based on replying affidavit sworn on 3/5/2016. The Respondent contends that the outcome of **Kapenguria HCC Succession cause No 2 of 2015** will not prejudice the Applicant. That the Applicant is utilising his own father's land being **LR No West Pokot/Keringet”A”/90** besides his other uncle's land. That the Applicant is out to oppress the grandchildren of the deceased by forcefully cultivating the suitland.

5. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondent. It is not in dispute that the Respondent filed this suit against the Applicant in her capacity as the administratrix of the estate of the deceased. The Respondent is said to have obtained grant of letters of administration of the estate of the deceased in her capacity as granddaughter. The Applicant is nephew to the deceased. The contention in the Succession Cause in Kapenguria High Court is that the Respondent is not a granddaughter of the deceased. That she obtained the letters of administration in a fraudulent way. There is an application which is seeking to annul that grant. The same is said to be coming up for hearing on 17/6/2016.

6. Since there is a challenge of the grant which is the basis of the Respondent filing this suit, it is fair that the proceedings herein be stayed pending the determination of the application seeking to revoke the grant. If it turns out that the Respondent should not have been given letters of administration as alleged, the issue of her capacity to bring this suit will come up. There is no point of proceeding with this case before the issue of who is entitled to the letters of administration of the estate of the deceased is determined.

7. The Applicant is said to have been cultivating the suitland since 2009. If it turns out that the grant was properly given to the Respondent, there will be no prejudice suffered by her as her case will go on

and any loss she may have suffered will be quantable and compensatable. I therefore find that the Applicant's application has merits. I allow the same with the result that all proceedings herein are hereby stayed pending the hearing and determination of the summons for revocation or annulment of the grant dated 21/3/2016 in **Kapenguria High Court succession cause No. 2 of 2015**. Costs shall be in the cause.

It is so ordered.

Dated, signed and delivered at Kitale on this 23rd day of May 2016.

**E. OBAGA**

**JUDGE**

**In the presence of Mr Yano for Mr Ingosi for Defendant/Applicant and M/s Mufutu for Mr Kiarie for Plaintiff/Respondent.**

**Court Assistant – Isabellah**

**E. OBAGA**

**JUDGE**

**23/5/16**