



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

ELC NO. 6 OF 2014

VIOLET BARASA.....PLAINTIFF

VERSUS

JOHN WILLY KISAKA BARASA.....DEFENDANT

AND

GRACE NALIAKA BARASA

PATRICK WANJALA BARASA

BEATRICE NAFULA MALENYA.....INTERESTED PARTY

R U L I N G

1. The applicant Violet Barasa is an Advocate of the High Court of Kenya. The applicant is one of the two widows of the late Joseph Wanyonyi Barasa.

2. The Defendant/Respondent is a brother in-law of the applicant as well as one of the administrators of the estate of the late Jafred Barasa Kisilili who was father in-law of the applicant.

The three interested parties are co-administrators with the respondent in respect of the estate of the late Jafred Barasa Kisilili.

4. The late Jafred Barasa Kisilili was a proprietor in common with one William Kisaka in respect of LR NO. 12589 comprising of 940.6 acres. The late Jafred Barasa Kisilili was entitled to 380 acres.

5. When the late Jafred Barasa Kisilili died, succession in respect of his estate was carried out. During the confirmation of grant, the applicant was given 33 acres in her capacity as widow of the late Joseph Wanyonyi Barasa who was son of the late Jafred Barasa Kisilili.

6. The administrators convened a family meeting and agreed to call in a surveyor to demarcate the land so that each beneficiary could get his/her title. The surveyor duly demarcated the land and put in place beacons.

7. The applicant became a neighbour of the respondent. Around March, 2013 the applicant who is

based in Nairobi received a report that the Defendant/Respondent had interfered with the beacons and was utilising part of her share of the land.

8. The applicant called the respondent and informed him about what she had heard. The respondent told her that the issue was to be sorted in early 2014 when the process of distribution will be completed.
9. The applicant caused a family meeting to be convened where it was agreed that the surveyor who had carried out the survey was to be re-called so that he could put in place the beacons which had been interfered by the respondent. The surveyor came and restored the beacons. The respondent however did not respect the restored boundary. He went a head to plough about 4 acres of the applicant's land and leased out 2 acres to someone else to plant cabbages near the river.
10. The applicant sent his agents to plough her portion in preparation of this year's planting season but the respondent chased them away with a matchet. It is on this basis that the applicant has moved to the court seeking the prayers in the application dated 16th January, 2014.
11. The respondent who was duly served neither entered appearance nor file any grounds of opposition to the applicant's motion or replying affidavit. One of the interested parties Patrick Wanjala Barasa filed a replying affidavit in which he supported the applicant's motion arguing that the action of the respondent is hampering the process of obtaining titles. He urged the court to move decisively and settle the dispute between the applicant and the respondent.
12. It is clear from the certificate of confirmation of grant that the applicant was given about 35 acres. The said acres were reduced because the surveyor found that the on land the ground was less by 18 acres and therefore each of the beneficiaries share was accordingly reduced.
13. Some of the prayers are seeking mandatory injunctions. The principles for grant of mandatory injunction at interlocutory stage are now well settled. A mandatory injunction ought not to be granted on an interlocutory application in absence of special circumstances. A mandatory injunction can only be given at interlocutory stage in clear cases either where the court is convinced that the matter ought to be decided at once or where the injunction is directed at a simple and summary act which could be easily remedied or where the defendant has attempted to steal a match on the plaintiff.
14. In the present case, it is clear that a surveyor was brought in and he demarcated each beneficiaries share. When the respondent interfered with the beacons, the surveyor was again called and he replaced the beacons. This is a clear case where a mandatory injunction out to be issued at interlocutory stage. This is not a case where long drawn out arguments can be put first in deciding the issues in question.
15. The defendant should not be allowed to remain in the portion of the applicant. He should move out and should respect the boundary as fixed by the surveyor. I find that the applicant's motion is well founded. All the prayers in the motion are hereby granted. The defendant/respondent shall pay the costs of this motion to the applicant.

It is so ordered.

Dated, signed and delivered at Kitale on this 27th day of February, 2014.

E. OBAGA,

JUDGE

COURT: Ruling delivered at 10.30 a.m. In the absence of the applicant who was aware of today's date. Court Clerk – Kassachoon.