



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 128 OF 2013**

**SELLA NYAKOA ETENYI ..... PLAINTIFF**

**VERSUS**

**1. ANDREW KIPROP TANUI  
2. CONSEFTA NASIMIYU TANUI ..... DEFENDANTS**

**RULING**

1. The applicant Sella Nyakoa Etenyi brought a notice of motion dated 03/04/2014 in which she seeks stay of enforcement of the decree issued in Kitale Chief Magistrate court Land Case No. 51 of 2011 pending the hearing and determination of the suit herein.
2. The notice of motion was duly served upon the respondents who neither filed any grounds of opposition to the same nor replying affidavit.
3. The applicant is a co-wife to the second Defendant/Respondent who is mother to the first Defendant/Respondent.
4. The husband of both the applicant and second respondent died in 2008. In the year 2011, the respondents filed a claim at the Kwanza Land Disputes Tribunal seeking to have a share of Plot No. 315 at Meteitei Farm which belonged to the deceased Pius Kiprop Tanui.
5. From the ruling of Kwanza Land Disputes Tribunal, it would appear that the proceedings were instituted during the time when the Land Disputes Tribunal Act had not been repealed. The same ruling shows that the parties to the claim appeared before the panel of elders on 30/8/2011 when the Environment and Land court Act which repealed the Land Disputes Tribunal Act came into force.
6. The panel of elders went on to entertain the dispute by delivering a ruling on 20/9/2011. The verdict of the Tribunal was adopted as judgement of the court on 13/12/2011.
7. It is clear that the panel of elders were alive to the fact that the dispute in the matter was one touching on Succession. They therefore ruled that the matter should be addressed in a Succession cause. In the meantime the panel ruled that each of the two younger wives of the late Pius Kiprop Tanui should each retain 6 acres each out of the Meteitei farm which was said to be 12 acres.
8. The respondents have since moved and are seeking to execute the decree of the Chief Magistrate's court in land case No. 51 of 2011.
9. The applicant contends that the proceedings of the Tribunal are a nullity as they were based on a repealed law.
10. I have considered the application by the applicant. The applicant has already filed a suit seeking to nullify the proceedings of the Tribunal on the grounds that they are a nullity. The issue which is for determination is whether the court should stay the execution of the decree.
11. It is clear from the ruling that the elders never gave any order for the deceased's land to be sub divided and shared out amongst his people. What the elders said was that pending Succession proceedings, each of the two younger wives of the deceased should each keep 6 acres. There is no basis upon which any of the parties herein can bring in a surveyor to sub divide the land.

12. The applicant has annexed a letter dated 17th March 2014 written by the County Surveyor of Trans Nzoia asking the Assistant Deputy Commissioner Kwanza to provide security during his visit to Plot No. 315 Meteitei. The County Surveyor has no authority to enforce a non-existent order of sub-division.
13. The applicant has demonstrated that she has a valid case against the respondents. There is no decree capable of execution in the guise of subdivision. I allow the application by the applicant with the result that there is hereby issued an order staying execution of decree in Kitale Chief Magistrate Land case No. 51 of 2011 until hearing and determination of the case filed herein. Costs shall be in the cause.

It is so ordered.

Dated, signed and delivered at Kitale on this 19th day of May, 2014.

**E. OBAGA,**

**JUDGE**

In the presence of Plaintiff/Applicant. Court Clerk – Kassachoon.

**E. OBAGA**

**JUDGE**

**19/05/2014**