

IN THE HIGH COURT AT KAKAMEGA

SUCCESSION CAUSE NO: 856 OF 2011

IN THE MATTER OF THE ESTATE OF LABAN TEKA IKHALE.....DECEASED

JOHN SITATI TEKA.....PETITIONERS

STANLEY LUTOROBWE TEKA

VERSUS

ROSE ALIUDZA ESIPEYA.....OBJECTOR/RESPONDENT

R U L I N G

The applicant' application dated 25/7/2012 seeks to stay the orders removing a prohibition registered on 20/8/1982 against plot number KABRAS/LWANDETI/349. The application is supported by the applicant's affidavit sworn on 25/7/2012. The petitioners filed grounds of objection to the application. Parties relied on their respective pleadings.

The main reason for the placement of the prohibition by the applicant against the suit land is that the petitioner had promised to pay the applicant Ksh 120,000/=. The applicant is apprehensive that since the prohibition has been removed, the petitioner will not pay him the money. The petitioner is his grounds of objection contend that the prohibition has already been removed and there is nothing to stay.

The pleadings show that the suit land belonged to the late LABAN TEKA IKHALE. The letters from the chief, Lwandeti location, dated 10/10/2011 indicate that there are about twenty beneficiaries. The reasons for the prohibition seem not to be related to the succession cause. The official search dated 10/10/2011 indicates that the land was charged to secure a sum of Ksh 30,000 on 12/5/2010. The beneficiary of the charge is the **Kakamega Trade Development Board**. There is also a caution that had been placed by STEWARD KABAKA who claims beneficiary interest. Another caution was placed in relation to Civil Suit No. RMCC 458/1980 Eldoret.

Since the prohibition placed by the applicant has already been removed and since the land is subject to succession, I do find that the application has been overtaken by events. All what the applicant can do is to pursue his claim as a liability to the deceased's estate if his claim is against the deceased. However, if his claim is against the petitioner personally, then the applicant should not inconvenience the other beneficiaries. The applicant should not use the court to collect his debt through unprocedural means. The applicant is free to sue the petitioner and claim his sum of Ksh 120,000. The grant has not been confirmed. The applicant can pursue his claim during the confirmation of the grant.

In the end, I do find that the application dated 25/7/2012 lacks merit and the same is dismissed with costs.

Dated, delivered and signed at Kakamega this 17th day of September 2014.

SAID J. CHITEMBWE

JUDGE