



REPUBLIC OF KENYA

High Court at Kericho

Civil Suit 108 of 2011

**IN THE MATTER OF THE ESTATE OF THE LATE KIPKOECH ARAP LANGAT
(DECEASED)**

BETWEEN

MOSES KOECH.....APPLICANT

VERSUS

RAEL LANGAT.....RESPONDENT

RULING

The application herein is by way of Notice of Motion, dated 2nd October 2012. It is brought pursuant to the provisions of **Order 50 Rule 1 and 3, Order 40 Rule 1 (a)** of the **Civil Procedure Rules** and **Section 3A** of the **Civil Procedure Act** and all enabling provisions of the law.

It seeks injunctive orders restraining the Respondent/Defendant and any other persons claiming under her from subdividing, evicting, alienating, selling, disposing off, receiving rents from the income of the estate of Late Kipkoech Arap Langat and dealing in any manner that is detrimental to proprietary interest of the Plaintiff and beneficiaries.

The application is premised on grounds that the Defendant/Respondent herein is the administratrix of the estate of the Late Kipkoech Arap Langat and she ought to have held it in trust for the beneficiaries. She has however failed to administer the Estate as is expected. She has subdivided the estate, and obtained title of **Kericho/Roret/3** and **Kericho municipality 631/42/IV (amended)** and has threatened to evict the applicant from **Kericho/Roret/3** instead of having the estate distributed. She has intermeddled with it, concealed rental income emanating therefrom which will result into the applicant suffering irreparable damage.

The application is supported by an affidavit sworn by the applicant.

In a reply thereto the Respondent opposed issuance of the injunction. She stated that the applicant, his son was the one intermeddling with the estate of his late father and the estate had not been fully distributed because of his interference. The applicant's siblings also swore affidavits in support of the Respondent as to the actions of the applicant that have made it impossible for the distribution of their late father's estate to be done.

The application herein being for an equitable remedy the applicant is under a duty of establishing his averments on a balance of probabilities.

The principles of granting an injunction were set out in the case of **Giella –vs- Cassman Brown & Co. Ltd (1973) E.A. 358.**

1. The Applicant must show a prima facie case with a probability of success.
2. The applicant must show that unless the injunction is granted he/she will suffer irreparable injury.
3. When the court is in doubt, it will decide the application on the balance of convenience.

Does the applicant herein have a prima facie case with a probability of success?

The applicant herein is a beneficiary of the Estate of Kipkoech Arap Langat. Annexure “**MKI**” to the affidavit in support of the application is a certificate of confirmation of the grant in Succession Cause no. 116B of 2001.

The Respondent herein is an administratrix in the said cause. She was to hold properties in trust for and on behalf of her children. The applicant herein being one of them. This is further confirmed in paragraph 6 of the replying affidavit. The properties were distributed as follows:-

1. **Kericho Municipality 631/42/IV (AMMENDED)**
2. **Kipilelji Market Plot No. 18**
3. **Kericho/Roret/3 (12.9 Acres)**
4. **Kericho/Londiani/100 (7.5acres)**
5. **Chemosit Market Plot No.6**
6. **Roret Market Plot No.32**
7. **Roret Market Plot No. 9**
8. **Isuzu Lorry**
9. **Water pump**
10. **Power generator**
11. **Platform scales**
12. **Kericho Roret 964**
13. **Kericho Roret 965 (9.86 Acres)**
14. **Kericho/Kapsuser/1618 equal share**
15. **Kericho/Kapsuser/1801 equal share**
16. **Kericho/Kapsuser/2080 equal share**

It is averred by the applicant in paragraph 5 of the affidavit that more than six months have lapsed yet the Respondent has not distributed the estate as required by the law. The grant of representation intestate was confirmed on the 10th March 2010 therefore indeed more than six (6) months have elapsed.

In paragraph 7 of the affidavit, the applicant avers that the Respondent has obtained certificate of titles

and has commenced subdividing the parcel of land with a sole purpose of alienating, selling and disposing off **Kericho/Roret/3** and **Kericho Municipality 631/42/IV (AMMENDED)** and she has also threatened to evict him from Title **Kericho/Roret/3**. In a reply thereto the Respondent in paragraph 8 avers that the estate has been distributed partially. The applicant has been a hindrance to the distribution and was the one intermeddling with the estate as he disposed off three (3) acres being part of title **LRNO. Kericho/Roret/964** and used the proceeds to construct a petrol station on title **Kericho/Roret/3** without consulting her as the administratrix.

He also sold off title **L.R. Kericho/Roret/32** and a Plot No. 18 Kiplelji market, Bomet and took over receipt of tea bonuses from L.R Kericho/Roret/81 without the knowledge of the Respondent. The Respondent in admitting having obtained a certificate of title for L.R. Kericho/Roret/3 and Kericho L.R No. 631/42/IV said she had them transferred for the purpose of distributing them to the beneficiaries.

She subdivided L.R Kericho/Roret/3 their matrimonial home into three (3) equal parcels to be shared by the applicant, his elder brother and herself as her homestead stands thereon. She had given the applicant a portion where he was to construct his house but he had adamantly refused to move out of her house where his nuclear family resides which makes her want to evict him therefrom.

Affidavits in support of the respondent were also sworn by the applicants' siblings namely Margaret Chepngeno, Leonard Koech, Chepkemoi Langat, Cheptoo Langat and Violet Chepkirui Langat. They reaffirm the averment that the applicant is the one intermeddling with the estate of the deceased by disposing off family properties without notifying other beneficiaries.

Margaret Chepngeno stated that **L.R No. 631/42/14 Kericho Municipality** is a residential premise within Kericho town and has been subdivided. Each one of them has houses where they get rental income from. Leonard Koech the eldest son in that house averred that the estate has been distributed partially. Further distribution has been hampered due to the applicant's unreasonable demands. He stated that after Kericho/Roret/3 was subdivided into three (3) equal shares the applicant refused to move to his portion comprising of nine (9) acres. He confirmed that what the Respondent said that LR No. 631/42/IV Kericho Municipality had been distributed to all of them, the applicant inclusive.

The applicant did not file any supplementary affidavit to dispute the averment by the Respondent and his siblings. Can he therefore be believed when he alleges that the Respondent has intermeddled with his deceased father's estate? Yet, he is alleged to be the trouble maker who has curtailed distribution of the estate. It is questionable if he would have a prima facie case in the circumstances. The reason being that he does not seem to have come before this court with clean hands.

The next issue to be considered is whether he will suffer irreparable damage if orders sought are not granted.

It is submitted by Counsel for the applicant that **Kericho/ Municipality 631/42/4** has residential premises, twenty eight (28) in number. The rent accruing was estimated at Kshs. 305,000 per month out of which the applicant was merely receiving Kshs. 20,000. His siblings have averred that each one of them is receiving what they are entitled to. The duty was upon the applicant to adduce evidence of what exactly each beneficiary was entitled to and what each one of them was receiving. This having not been done it may be taken that each person may be receiving the share they are entitled to. It is incumbent upon the administratrix to ensure that each beneficiary gets his/her entitlement but if the applicant has disposed off what he is not solely entitled to without the consent of the administratrix then it cannot be said that he is likely to suffer damage.

This court having been left in doubt has to reach a decision on a balance of convenience.

This is a matter that has come up because the applicant who is aggrieved is a beneficiary of the estate of his late father. The respondent his mother has embarked on distribution of the estate. For reasons advanced there has not been full distribution. The applicant being dissatisfied with the mode of distribution adopted by his mother (Respondent) should have applied in the succession cause to have the

Respondent herein produce before the court an accurate account of how she has dealt with the deceased's estate that she was administering.

An injunction being an equitable remedy, the applicant ought to have come before this court in good faith. He came to this court seeking equity hence should have acted with clean hands. Granting such a person injunction orders against a person who is not able to act due to some hindrance by the person seeking the orders will be unjust. In the premises I decline to grant the orders sought. The application is dismissed.

Since this is a family issue there will be no orders as to costs.

Orders accordingly.

DATED at KERICHO this 21st day of November 2012.

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LILIAN N. MUTENDE

JUDGE

COUNSEL APPEARING

Mr. Akinyi, Advocate, for the Defendant
Mr. Miruka, Advocate, for the Applicant
Mr. R. Koech- court clerk