

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET**

Civil Case 102 of 2006

WILLIAM KIPLAGAT KOECH PLAINTIFF

VERSUS

STEPHEN KIMELI KOECH 1ST DEFENDANT

NATHAN KIBET 2ND DEFENDANT

R U L I N G

At the hearing inter partes of the application by the Plaintiff dated 21st September, 2006, the Defendants applied that the same be stayed pending the hearing of an application for revocation or annulment of grant issued to the plaintiff, in respect of the Estate of the late Kipkoech Akwa Bargutwa.

There is no dispute that the Plaintiff and the two Defendants are brothers. The Defendant's claim that the suit property was part of the assets of the Estate of their late father. I have seen a copy of Land Certificate given on 6th January, 1975 showing that the suit property Nandi/Eisero/328 was previously registered in the name of the deceased. It would appear that the said property was transferred to the Plaintiff as a transmission in Succession Cause No. 8/1991. In his Replying Affidavit the application for annulment the Plaintiff claims that he was given plots 328 and 373 totaling 43 acres by his father as the only son of the deceased's second wife. The issues in the present suit touch on and involve issues relating to the succession to the Estate of the Late Kipkoech Akwa Bargutwa.

It is my view that the said issues must first be resolved in the succession proceedings through which the Plaintiff appears to have acquired title. It is unrealistic and diversionary for the Court to deal with the indefeasibility of the title in this suit when the history and roots of the land lie in the succession proceedings.

As a result, I hereby order the stay of the present application in this suit and direct that the parties set down the application for revocation or annulment for hearing. The said application shall take priority to the application for injunction herein.

It is clear that in the event the Defendants are successful in the succession proceedings then, then the matter will be effectually resolved.

Orders accordingly. Orders to be recorded in MCA 61 of 2006.

Dated and delivered at Eldoret on this 26th January, 2007.

M. K. IBRAHIM

JUDGE