

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Suit 66 of 2005

EVALINE CHEPKOSKEI RONO.....1ST PLAINTIFF

JOHANA KIPROP LANGAT.....2ND PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA LTD.....DEFENDANT

RULING

By a chamber summons dated the 14th of March 2005, the plaintiffs Evaline Chepkoskei Rono and Johana Kiprop Langat made an application under the provisions of **Section 63(c)(e) Civil Procedure Act and Order XXXIX rules 1,2 and 2A of the Civil Procedure Rules** seeking orders of temporary injunction to restrain the defendant by itself its agents and servants from causing parcel number **KERICHO/LONDIANI/KEDOWA/BLOCK 3/194 (CHEBEWOR)** (*hereinafter referred to as the suit land*) to be transferred from the name of Joel Kiplang'at Rono (*deceased*) (*hereinafter referred to as the deceased*) pending the hearing and determination of the suit. The plaintiffs further sought to stay the sale of the said suit land pending the determination of the main suit. The grounds in support of the application are that the defendant, through their agents Saddabri Agencies had advertised the suit land for sale. The plaintiffs contend that the deceased had by act of error or fraud had himself registered as the owner of the suit land to the exclusion of all the other beneficiaries of the suit land. The application is supported by the annexed affidavit of Evaline Chepkoskei Rono. The application is opposed. The respondent has filed a replying affidavit opposing the application. Its Nakuru Branch manager, Samuel Odiyo has sworn a replying affidavit challenging the assertions made in the plaintiffs' application. The defendant also filed grounds of opposition to the said application.

At the hearing of the application, I heard the submissions made by Miss Makokha for the plaintiffs and Mr Kiburi for the respondent. Miss Makokha submitted that this court should grant the orders sought because the plaintiffs were not aware that the deceased had charged the suit land to the defendant. It was her submission that the plaintiffs only became aware of this fact when they were served with a notification of the sale of the suit land. She further submitted that the suit land had been transferred to the name of the deceased by fraud. It was her further submission that the suit land was family land which could not have been charged by the deceased to the defendant without the permission of the family. It was further argued that the plaintiffs had resided on the suit land since birth and therefore any action to dispossess them of the suit land would result to them having no place to live. She submitted that the plaintiffs had no alternative parcel of land to move to in the event that the said suit land would be sold. It was submitted that the plaintiffs had established a prima facie case and therefore should be granted the orders sought.

Mr Kiburi Learned Counsel for the defendant opposed the application. He submitted that the application was incompetent because the plaintiffs did not have *locus standi* to bring the suit before this court. He submitted that the plaintiffs had not obtained letters of administration to enable them file this suit on behalf of the deceased's estate. He further submitted that the plaintiffs, if the allegation to the effect that the suit land was transferred to the deceased by fraud were true, then they were beneficiaries of the said fraud. He argued that the suit land had been properly and legally charged to the defendant by the deceased. The legality of the charge had not been challenged by the plaintiffs. He therefore submitted that the defendant had every right to realize its security once there was default of the payment of sum advanced. He further submitted that once a parcel of land is charged, it ceased to have sentimental value as a clan land and instead became a commercial property which would be liable to be sold in the event

that there was default. He further submitted that there was no dispute that the deceased inherited the suit land from his deceased mother without any objection from the plaintiffs. He therefore submitted that fraud had not been proved. He urged the court to dismiss the application as a prima facie case had not been established.

I have read the application filed by the plaintiffs and the response made thereto by the defendant. I have also considered the rival arguments made by learned counsel for the plaintiffs and the defendant. The issue for determination by this court is whether the plaintiffs have established a case so as to enable this court grant the order of injunction sought. Certain facts are not in dispute in this case. It is not disputed that the deceased, Joel Kiplang'at Rono charged the suit land to the defendant. He secured a loan and defaulted in paying the same. The defendant sought to realize the security. The said Joel Kiplang'at Rono died on the 1st of October 2000. According to the plaintiffs, the deceased was registered as the owner of the suit land in trust for the family members of the late Chepkorir Taprandich Mogun - deceased. The deceased could not therefore deal with the suit land to the detriment of the plaintiffs. The plaintiffs have further submitted that, if the said parcel of land is sold, they would have nowhere else to go to.

Submissions were made that the deceased charged the said property to the respondent fraudulently. The allegations of fraud have been particularized in the plaint. One of the particulars of fraud is that the deceased charged the property to the defendant without the permission of the family. The defendant however does not agree with the submissions made by the plaintiffs. In the first place, it has submitted that the plaintiffs did not have *locus standi* to bring this suit to court because they had not obtained letters of administration to administer the estate of the deceased. The defendant further submitted that the said parcel of land was legally charged to it by the deceased to secure a loan, which loan the deceased defaulted in paying hence the decision by the respondent to realize its security.

Having considered the arguments made, it is evident that the plaintiffs herein are purporting to file suit in regard to a parcel of land registered in the name of a deceased person. They have not obtained letters of administration to administer the said deceased person's estate. They therefore lack capacity to bring any suit in regard to the said parcel of land. As was held by the Court of Appeal in the case of **Trouistick Union International & Another –vs- Mrs Jane Mbeyu & Another Civil Appeal No. 145 of 1990 (unreported)** no person can purport to file suit on behalf of a deceased's person estate without first obtaining letters of administration. This court applied this decision in the case of **John Bartinga Tonje & Others –vs- Retired General Daudi Tonje NAKURU HCCC NO. 206 OF 2004 (unreported)**.

Although the plaintiffs in this case have stated that the deceased had charged the suit property to the defendant without their permission, *prima facie*, the plaintiffs are dealing with a property registered in the name of a deceased person. This court cannot consider the merit or otherwise of the plaintiffs case where clearly this suit has been filed without the requisite authority. For that reason, I hold that the plaintiffs could not possibly establish a prima facie case where in the first place they do not have *locus standi* to bring a suit on behalf of the deceased's estate. Their application for injunction must therefore fail. It is hereby dismissed with costs.

DATED at NAKURU this 17th day of February 2006.

L. KIMARU

JUDGE