



Kemei & another v Kibet & 3 others (Sued as the legal representatives of the Estate of Kibet Sang - Deceased) (Land Case E047 of 2024) [2024] KEELC 6541 (KLR) (9 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6541 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
LAND CASE E047 OF 2024
EO OBAGA, J
OCTOBER 9, 2024**

BETWEEN

EMMANUEL KEMEI 1ST PLAINTIFF

MICHAEL K MWANGI 2ND PLAINTIFF

AND

PAULINE JEPKEMBOI KIBET 1ST DEFENDANT

JULIUS KIPKEMBOI KIBET 2ND DEFENDANT

ELIZABETH JEPCHIRCHIR SANG 3RD DEFENDANT

SYLVESTER KIPLAGAT KIBET 4TH DEFENDANT

SUED AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF KIBET SANG - DECEASED

RULING

1. This is a ruling in respect of a Notice of motion dated 23.7.2024 in which the Plaintiff/Applicant seeks the following orders:-
 1. Spent
 2. The execution of the ruling/orders and/or certificate of confirmation of grant issued by the succession court in Eldoret High Court Probate and Administration Cause No. 105 of 2010 Estate of Kibet Sang (Deceased) to the 1st to 4th Defendants/Respondents together with any consequential orders made thereto be stayed pending the hearing and determination of this application eventually the main suit.
 3. The Honourable court be pleased to issue an order of maintenance of status quo and/or a temporary injunction restraining the Defendants/Respondents, their agents, assigns and/or



servants from interfering, surveying, subdividing, transferring, alienating, charging, disposing off parcel of land known as LR. No. Kaptagat/Lotonyok Block 3 (Ngele Tarit)/33 and/or doing anything/things detrimental to the Plaintiff/Applicant's rights and interests over the suit land pending the hearing and determination of this application interparties and eventually the main suit.

4. The costs of this application be awarded to the Plaintiff/Applicant.
2. The Plaintiff/Applicant is a brother to the Defendants/Respondents who are the administrators of the Estate of the late Kibet Sang (Deceased). The Applicant is registered owner of LR. No. Kaptagat/Lotonyok/Block 3 (Ngele Tarit)/33 measuring 30.11 hectares (suit property).
3. The Applicant states that he purchased the suit property from the deceased in 2005 and had it transferred to him whereupon he obtained title on 10.5.2005. The Respondents filed succession proceedings in Eldoret High Court succession cause No. 105 of 2010 where they obtained grant of letters of administration in respect of the estate of the Deceased. The grant was confirmed on 11.12.2023 whereby the suit property was distributed to the beneficiaries.
4. The Applicant contends that the grant was obtained without disclosing that the suit property was not part of the estate of the Deceased. He states that the Respondents have gone ahead to subdivide the suit property which subdivision was done after the Respondents threatened violence against him. It is on this basis that the Applicant wants orders staying implementation of the succession cause and registration of the mutations arising from the subdivision.
5. The Respondents who were duly served with the application neither entered appearance nor filed replying affidavit or grounds of opposition. The application therefore proceeded ex-parte.
6. Though the application was not opposed, the Applicant was bound to prove that he has a prima facie case to warrant issuance of injunction orders or for stay of the implementation of the distribution as per the confirmed grant.
7. To begin with, this court does not have jurisdiction to stay succession proceedings which are the preserve of the High court. If the Applicant had any issues to raise over the suit property, he should have done so before the High Court which dealt with the succession issue. I cannot therefore issue orders staying implementation of a succession cause.
8. On whether the Applicant has demonstrated that he has a prima facie case with probability of success, I notice from the material presented before the court that the Applicant has title to the suit property. However, there are no documents to show how he purchased the suit property from his father. This being the case and given the fact that he is one of the beneficiaries of the suit property in the succession cause, I find that there is no basis upon which the court can make a finding that he has a prima facie case with probability of success. The Applicant will not suffer loss which will not be compensated in damages. The Applicant having not challenged the inclusion of the suit property in the succession cause and the grant having been confirmed where he is one of the beneficiaries, the balance of convenience tilts in favour of the distribution as per the succession court verdict pending the hearing and determination of this suit.
9. The upshot of this is that I find that the Applicant's application is devoid of merit. The same is dismissed with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 9TH DAY OF OCTOBER, 2024.



E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Songok for 4th Defendant.

Mr. Mathai for 2nd Defendant.

Mr. Cheruiyot for Mr. Omusundi for Applicant.

Court Assistant –Laban

E. O. OBAGA

JUDGE

9TH OCTOBER, 2024

