



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 148 OF 2015**

**FLORENCE NASAMBU**

**ELIZABETH CHEMAKAL JACKSON}-PLAINTIFFS/APPLICANTS**

**VERSUS**

**SELINA CHELIMO JACKSON .....DEFENDANT/RESPONDENT**

**R U L I N G**

1. The two Applicants and the Respondent are all administrators of the estate of their late husband **JACKSON LOMERI LOMACHAR** (deceased). The Applicants brought a Notice of Motion dated 19/11/2015 in which they seek orders of injunction against the Respondent in respect of **LR. NO. WEST POKOT/KERINGET A/2930** (suitland).
2. The Applicants contend that the suitland is part of some 4 ½ acres which the deceased bought in 1998. That the deceased settled the Respondent on the 4 ½ acres which he bought . After the deceased died on 14/9/2006, the Respondent fraudulently had the suit land registered in her name as the sole proprietor instead of having registered it as being held for the benefit of other beneficiaries of the estate of the deceased.
3. The Applicants contend that the Respondent forged a sale agreement which she back dated to the same day when the deceased bought the land part of which is the subject of a suit filed against the Respondent.
4. The Respondent has opposed the application based on a replying affidavit sworn on 11/1/2016. The Respondent contends that the estate of the deceased has already been distributed and that the suitland is not part of the estate. She refers to a ruling by **Justice Githinji** delivered on 10/11/2015. The Respondent further contents that the Applicants have no case against her as their claim is based on agreements which were made in 1998 and that therefore their claim is statute barred and hence no order can be given as prayed.
5. I have carefully considered the Applicants' application as well as the opposition thereof by the Respondent. There is no contention that the deceased bought 4 ½ acres from one **BORIOT AMIGOS KASSACHOON**. He bought 2 acres on 1/9/1998 and on 4/11/1998 he bought 2 ½ acres making it 4 ½ acres. The acres purchased formed part of **LR NO. WEST POKOT/KERINGET A/32** which was registered in the name of **EZEKIEL PORRIOT KASSACHOON**.
6. From the affidavits of both the Applicants and the Respondent, the relationship of **BORIOT AMIGOS KASSACHOON** and **EZEKIEL PORRIOT KASSACHOON** is not clear. However be that as it may, the fact remains that though Plot **NO WEST POKOT/KERINGET A/32** was registered in the name of **EZEKIEL PORRIOT KASSACHOON**, it is **BORIOT AMIGOS KASSACHOON** who

sold it and there seems to have been no problem with that as the land was subsequently sub-divided and new titles came up.

7. The suitland is traceable to **LR NO WEST POKOT/KERINGET A/32**. The Respondent was registered as owner of the suitland on 18/1/2010 when the same was transferred to her by **Selinah Cheposeker Kassachoon**. The transfer of the suitland to the Respondent was allegedly based on the sale agreement allegedly made between her and **BORIOT AMIGOS KASSACHOON** on 4/11/1998, the same day the deceased made agreement with the same person.

8. The 4 ½ acres bought by the deceased do not appear in the list of properties distributed in the succession cause. The Respondent does not contend that what she alleges to have bought on 4/11/1998 is different from what the deceased had bought. It is therefore clear that the land bought by the deceased is the same land which the Respondent registered in her name. The suitland was left out during the distribution of the deceased's estate as the same was already in the name of the Respondent. The ruling of 10/11/2015 in the succession cause is clear that it had been agreed that the true ownership of the suitland was to be decided by the Environment and Land Court. It is therefore wrong for the Respondent's lawyers to imply that the Judge in the succession cause had made a finding that the suitland belonged to the Respondent. The suitland was left out during distribution not because it was not available for distribution but because it was registered in the Respondent's name.

9. I find that this is a proper case where orders preserving the suit property ought to be given. I therefore allow the Applicants' application and order that the Respondent shall not charge, transfer, sell or lease the suitland until the hearing and determination of this suit. The Applicants shall have costs of this application.

It is so ordered.

Dated, signed and delivered at Kitale on this 4th day of April 2016.

**E. OBAGA**

**JUDGE**

**COURT:** Ruling delivered at 2.30 pm in the absence of parties

who were aware of the date and time for ruling.

Court Assistant : Winnie

**E. OBAGA**

**JUDGE**

**4/4/16**