



**REPUBLIC OF KENYA**

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

**LAND CASE NO.78 OF 2016**

**PATRICIA ACHIENG SAWO.....PLAINTIFF/RESPONDENT**

**VERSUS**

**HELLEN CHEMELI KENDUIYWA.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**JULIANA CHEPTOO KENDUIYWA.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RUTH CHEBET KENDUIYWA.....3<sup>RD</sup> DEFENDANT/APPLICANT**

**MARK KENDUIYWA.....4<sup>TH</sup> DEFENDANT/APPLICANT**

**LILIAN CHEPKOECH KENDUIYWA.....5<sup>TH</sup> DEFENDANT/APPLICANT**

**RULING**

**BACKGROUND**

1. The Plaintiff/Applicant is a beneficiary of **4 acres** which was comprised in **Title No. Sinyerere/Sitatunga Block 3/Taito/95** which was owned by **Barngetuny Kenduiywa** (deceased). The applicant had purchased the 4 acres from the daughter in-law of the deceased one **Susan Chebet**.

2. The first Defendant/Respondent is the administratrix of the estate of the deceased and is mother to the second, third and fifty defendants/respondents. During the process of distribution of the land owned by the deceased, the applicant's interest was taken care of as one of the beneficiaries. The grant of letters of administration in respect of the deceased's estate was confirmed in terms of the agreed mode of distribution.

3. Prior to the confirmation of the grant, the applicant as well as some other beneficiaries had been settled on the ground on temporary basis. After confirmation of the grant a surveyor was brought and surveyed the deceased's land and all beneficiaries were settled. The settlement of the beneficiaries inevitably caused some adjustments to the temporary boundaries existing by then. The adjustments led to slight movement of the applicant on the ground prompting this application. The title to the deceased's land was closed on subdivision and new titles have come out. Some beneficiaries have collected their titles but the applicant has not.

**APPLICATION'S CONTENTION**

4. The applicant contends that she bought her four acres from one of the family members of the deceased between 2008 and 2009. She took possession and settled after putting up a house. She started growing

maize and rearing animals. During the succession of the estate of the deceased, she was recognized as one of the beneficiaries.

5. In February, 2016, the respondents who were accompanied by a contingent of police officers went to her portion and demanded that she moves out. She resisted and they went away. The same respondents came back on 12/4/2016 in company of armed private guards who were in company of a police officer. They tried to demarcate the land. She mobilized her family members who stood firm on the ground halting the process.

6. The applicant contends that she later learnt that the respondents had subdivided the land and had registered mutations in the lands office. That the subdivision places her in a different location. This is why she prays for injunction to restrain the respondents from re-locating her.

### **RESPONDENTS CONTENTION**

7. The respondents contend that the applicant is being difficult by refusing to co-operate in the process of subdivision. They contend that the 4 acres due to the applicant are intact only that after the survey process, there were minor adjustments of the boundaries. The adjustments were due to the fact that there were other beneficiaries who were not on the ground and during subdivisions, there had to be adjustments to accommodate them.

8. The respondents further contend that the applicant's house has not been interfered with but that it is only the temporary boundaries which were affected. That some beneficiaries have obtained their titles. It is the applicant who has not picked her title upon payment of the requisite fees.

### **ANALYSIS**

9. The applicant in her plaint seeks an order directing the County Surveyor Trans-Nzoia to carry out fresh survey to accord with the current occupation on the ground. She also seeks a permanent injunction restraining the respondents from interfering with her 4 acres comprised in **LR. No. Sinyerere/Sitatunga Block 3/Taito/95**. She further prays for revocation of titles already issued to the respondents.

10. This being an application for injunction, the applicant is expected to demonstrate that she has a prima facie case with probability of success. Now the only issue for determination is whether the applicant has demonstrated that she has a case with probability of success to warrant issuance of an injunction.

11. The respondents have demonstrated that the process of subdivision has already been completed. **Title No. Sinyerere/Sitatunga Block 3/Taito/95** over which she seeks injunction has already been closed and is therefore non-existent. There is no one seeking to take the 4 acres which she bought. Her interests have been taken care of in the succession. The survey which the applicant is contesting was done after the confirmation of grant. This was to allow all the beneficiaries to be settled on the ground. It is not contested that some beneficiaries were not on the ground prior to the subdivision. They had to be settled and this was bound to cause some adjustments.

12. It was submitted by the respondents counsel that during the adjustments, the houses of the applicant were never affected. This fact was not denied. The applicant bought her 4 acres before confirmation of grant of letters of administration. Even if she was shown her boundaries on the ground, these boundaries were bound to change after survey. It is therefore untenable that the applicant can demand for fresh survey which will leave her in the exact position which she had been occupying. To this extent, I do not see what prima facie case the applicant has. One cannot seek an injunction on a property which is non-existent. I find that the applicant's application lacks merit. The same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this **14<sup>th</sup>** day of **September, 2016**.

**E. OBAGA**

**JUDGE**

In the presence of M/s. Mufutu for Mr. Kiarie for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents.

Court Assistant - Isabellah.

**E. OBAGA**

**JUDGE**

**14 /9/2016**