



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

ELC CASE NO. 35 OF 2014

BENEDETTE NAFULA WANYONYI.....PLAINTIFF

VERSUS

DONALD KIBUNGUCHI KISAKA

PATRICK SITATI KISAKA

EDWIN WEKESA NASONG'O.....DEFENDANTS

R U L I N G

1. The applicant brought a notice of motion dated 20th February, 2014 against the respondents in which she seeks an injunction against the respondents restraining them from interfering with one acre forming part of 55 acres being her husband's share from her late father-in-law.
2. The applicant is widow of Wycliffe Wanyonyi Kisaka who was son of the late William K. Kibunguchi. The husband of the applicant died before his father 's estate would be distributed.
3. The first respondent is a brother in-law of the applicant and the second respondent is son of the first respondent. The two are administrators of the estate of the late William K. Kibunguchi.
4. During the distribution of the estate of the late William K. Kibunguchi, the applicant was given 55 acres which were to be held jointly with her and the first respondent for the benefit of the applicant's children.
5. On 19/7/2013, the first and second respondents sold one acre of her share to the 3rd respondent who has gone ahead to curve one acre from the middle of the 55 acres and has started fencing the land and is in the process of uprooting mature coffee plants growing on the said land.
6. The applicant contends that the one acre was sold without her consent, this being her family land and that the first and the second respondents had no authority to do so.
7. The applicant contends that the 3rd respondents has been violent towards her and her servants and has threatened to harm her should she go on with her intentions to stop him from going on with the fencing. This is the basis upon which she has come to court seeking orders of injunction.

8. All the respondents were duly served with the motion herein and summons to enter appearance but they neither entered appearance nor filed any replying affidavit or grounds of opposition to the application.
9. I have considered the applicant's application as well as annexures thereto. It is clear that the applicant was given 55 acres from the estate of her late father-in-law being her late husband's share. The 55 acres are to be jointly held by the applicant and the first respondent for the benefit of the applicant's children. The first respondent has his own land being his share from his father's estate.
10. The applicant has annexed a copy of a sale agreement dated 19th July, 2013 (*Annexure B N W 2*). In this agreement, the vendors are shown as the first and second respondents as administrators of the husband of the applicant. The applicant contends that her deceased husband died before distribution of the estate of his father. From the amended certificate of confirmation of grant, it is shown that the amendment was done on 7th April, 2011. The sale took place two years later.
11. The 55 acres was given directly to the applicant as her husband had died before distribution of his father's estate. The first and second respondents could not therefore purport to sell the one acre in their capacity as administrators of the applicant's husband.
12. The applicant has demonstrated that she has a prima facie case with a probability of success. She is entitled to the injunction sought. I therefore grant an injunction in terms of prayer (2) of the notice of motion dated 20th February, 2014. The respondents shall pay the costs of this application to the applicant.

It is so Ordered

Dated, signed and delivered at Kitale on this 5th day of March, 2014.

**E. OBAGA,
JUDGE**

In the presence of Mr Chebii for applicant. Court Clerk – Kassachoon.

**E. OBAGA,
JUDGE**

5/3/2014