

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

Civil Suit 67 of 2006

MOSES KWOPA SARANA..... PLAINTIFF

~VERSUS~

REBECCA NAMAROME WERE.....1ST DEFENDANT

MESHACK WERE SARANA.....2ND DEFENDANT

LEVI WANYAMA WAFULA.....3RD DEFENDANT

RULING

This is an application under Order 6 rule 13 (1) (b) and (d) and rule 16 of the Civil Procedure Rules to have the Plaintiff's suit struck out with costs for being scandalous, frivolous and vexatious, or otherwise being an abuse of the process of the court. The application was brought by the 2nd and 3rd Defendants.

It would appear not to be in dispute that the deceased Were Sarana died on 10/10/1967. He left land parcel East Bukusu/East Sang'alo/301 measuring about 29.2 acres in his name. His widow Rebecca Namarome Were (1st Defendant) filed a succession cause in H. C. Succession Cause no.112 of 1998 at Bungoma and named the 2nd and 3rd Defendants as some of the beneficiaries of the estate. The Plaintiff herein filed an objection to the making of the grant. He claimed to be the adopted son of the deceased who was entitled to 4 acres of the estate. It is not in dispute that the Cause and the objection are pending.

In the instant case, it was claimed that while the Cause was pending the 1st and 2nd Defendants conspired and transferred the suit land to the 2nd Defendant. The 2nd Defendant subdivided the suit land into East Bukusu/East Sangalo/2758 and 2759 and transferred the later portion to the 3rd Defendant. The Plaintiff occupies the entire land covered by 2759. The suit was brought for a declaration that the subdivisions and transfers were unlawful and ought to be cancelled pending the Cause.

I agree with the 2nd and 3rd Defendants that land parcel 301 and any subsequent subdivisions are subject of the Cause which is pending and any grievance in regard to the parcels should be brought in the Cause. It was an abuse of the process of the court to file the present suit. The court hearing the Cause can injunct any action or recall any alienation of parcel in the matter. The court in the Cause will determine who the beneficiaries of the estate of Were Sarana are and what their respective shares are. If the Plaintiff claims to be a beneficiary he is required to establish the claim in the Cause.

I allow the application and strike out the suit with costs for being an abuse of the process of the court.

Dated, signed and delivered at Bungoma this 2nd day of October, 2012.

A. O. MUCHELULE

JUDGE