



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

SUCCESSION CAUSE NUMBER E085 OF 2024

**IN THE MATTER OF THE ESTATE OF MARITIM ARAP
BWOGO (DECEASED)**

DANIEL KIPKURUI MARITIM

1ST ADMINISTRATOR

AMOS KIPYEGON RONO 2ND

ADMINISTRATOR

AND

ROBERT KIBET NGENO & EVALYN NGENO

PURPORTED PURCHASERS OF THE DECEASED'S ESTATE

RULING

1. This Ruling relates to two applications *to wit*; the 1st Administrator's Application dated 20th January 2025 and another dated 10th February 2025 brought by the above

named Robert Ng'eno Kibet and Evalyn Ng'eno through G. N. Githae & Company Advocates.

2. Beginning with the Notice of Motion dated 10th February, 2025, the 1st Administrator prays for orders as hereunder;-

1. Spent.

2. THAT Pending the hearing and determination of this application, this Honourable court be pleased to discharge, vacate, vary or set aside *ex-parte* temporary order of injunction issued on 30/1/2025 restraining the 1st and 2nd the Applicants herein and or whomsoever from entering, erecting structures, cutting down trees, cultivating on or otherwise trespassing upon land title No. NAKURU/OLENGURUONE/KIPTAGICH/180 (“hereinafter referred to as the suit land”) until further directions of the court.

3. THAT pending the hearing and determination of the succession petition, this Honourable court be pleased to discharge, vacate, vary or set aside *ex-parte* temporary order of injunction issued on 30/1/2025 restraining the 1st and 2nd the Applicants herein and or whomsoever from entering, erecting structures, cutting down trees, cultivating on

or otherwise trespassing upon land title No. NAKURU/OLENGURUONE/KIPTAGICH/180 until further directions of the court.

4. THAT *status quo* be maintained on the ground to allow the applicants access/enter the suit land until the question to be investigated in the substantive succession petition is finally disposed of.

5. The costs of this application be provided for.

3. By affidavit in support of the Application, one of the Applicants (Robert Kibet Ng'eno) challenges the interim injunction issued in favour of the 1st Administrator of the Estate on 30/1/2025. He contends that the 1st Administrator who is the Respondent to the Application, did not give all material facts to the court.
4. It is averred that the 1st Administrator has no proprietary interest in the property in question, being the above described land parcel **No. Nakuru/Olenguruone/Kiptagich/180** which his siblings sold to them. As purchasers, the Applicants allegedly long took possession of the land and carried out developments thereon that involved huge investments. The Applicants

claim to have planted tea leaves on the land plucking of which could be jeopardized. They are also rearing animals on the disputed land.

5. For these reasons, *inter alia*, the Applicants urge the court to set aside the temporary injunction granted to the 1st Administrator.
6. The 1st Administrator opposes the Application through his affidavit sworn on 11th March 2025. He accuses the Applicants of intermeddling with the Estate for purporting to have bought part thereof after the deceased's death, without the authority of the court. The transaction is said to be tainted with illegality in the circumstances. The transaction is also said to suspiciously coincide with a period when the 1st Administrator's deceased mother was unwell and she could not therefore have sanctioned the deal.
7. The 2nd Administrator of the Estate (Amos Kipyegon Rono) also opposes the Application for the same reasons by affidavit in reply. He contends that the Applicants are not *bonafide* purchasers. He wants both Applications dismissed.

8. Only the 2nd Administrator seems to have filed submissions on this Application. I have perused the submissions against the rival affidavit evidence. The issue for determination is whether or not the interim injunction order herein was merited. There is *prima facie* evidence of intermeddling with the deceased's Estate to the extent that the Applicants purported to purchase part of the deceased's Estate after his death and without the court's permission. This is intermeddling with the Estate within the meaning of section **45 of the Law of Succession Act**. The *ex-parte* interim relief was only granted to preserve the contested property pending hearing of the Application *inter-partes*. There is therefore no basis for discharge of the court orders.
9. Consequently, the Application is dismissed with no order as to costs.
10. In the Notice of Motion Application 20th January 2025, the 1st Administrator prays for orders as hereunder;

1. Spent.

2. THAT pending conclusion of the Succession Petition herein, this Honourable Court be pleased to issue a temporary order of

injunction restraining the Respondents either by themselves, their agents, servants and/or any other person acting on their behalf from trespassing and/or entering, putting up structures, cutting down trees, cultivating, planting, ploughing, alienating and/or in any way intermeddling with all that parcel of land known as Title No. Nakuru/Olenguruone/Kiptagich/180.(sic)

3. " Do".

4. Spent.

5. THAT this Honourable Court be pleased to issue eviction orders against the 2nd Respondent.

6. THAT the costs of this Application be borne by the Respondents.

11. A temporary *ex parte* injunction was issued on 30/1/2025 pending directions and disposal of the Application.

12. The 1st Administrator swore an affidavit in support of the Application, stating that he is a son of the deceased herein in whose name the subject land parcel **No. Nakuru/Olenguruone/Kiptagich/180** is registered. The Respondents, the Applicants in the earlier Application, are alleged to have trespassed upon the land after the

deceased had passed on, purporting to have bought it from the 1st Administrator's brother (Philip Ibrahim Samoei). The Respondents had been cautioned against unlawfully purchasing the deceased's land but they ignored the warning.

13. The Respondents are also said to have purported to buy an acre of the deceased's land from the 1st Administrator's sister who is mentally incapacitated. The 1st Administrator further deposes that when his mother also died, the Respondents descended on their family land, demolished his deceased 'parents' home and constructed a new house for themselves using materials from the deceased's destroyed house.
14. The 1st Administrator continues to state that he had filed **Environment and Land Case (ELC) No. 136 of 2020** in the Chief Magistrate's Court at Nakuru seeking to restrain and evict the trespassers. A temporary injunction order was issued in his favour but was later discharged when Grant of Letters of Administration issued to him was revoked. The 1st Administrator and his siblings then brought the current

proceedings after regularizing their position, praying for the same relief pending transmission of the deceased's Estate to lawful heirs. He accuses the Respondents of intermeddling with the Estate of his deceased father, and so injunction is warranted.

15. The 2nd Administrator swore an affidavit in reply, apparently on behalf of the Respondents as well, saying that he is also the deceased's child from his second house. He claims that the 1st Administrator and his siblings of the first house had unilaterally sold portions of the deceased's land in question to the Respondents before obtaining Grant of Letters of Administration. He too complains that the 1st Administrator and his siblings intermeddled with the Estate of the deceased. The 1st Administrator therefore allegedly dishonestly accuses the Respondents of trespass, according to the 2nd Administrator. He wants the Application to be dismissed.
16. The Respondents oppose the Application *vide* their affidavit in reply, maintaining that they lawfully purchased the subject land..

17. The 1st Administrator filed further affidavit evidence reiterating his position. The parties also filed written submissions which I have perused.

18. In the popular case of **Nguruman Limited vs Jan Bonde Nielsen & 2 Others** (2014) eKLR which in turn cites the case of **Giella vs Cassman Brown Company** with approval, three requirements have to be satisfied before grant of an interlocutory injunction;

a) **The Applicant has to establish a *prima facie* case.**

b) **He/she must demonstrate that irreparable injury will result if a temporary injunction is not granted**

and

c) **If the court is in doubt it will determine the application on the basis of the balance of convenience.**

19. The three limbs are to be surmounted sequentially (see **Nguruman Limited vs Jan Bonde Nielsen & 2 Others** [2014] eKLR). This means the Applicant has to satisfy each of the three elements to obtain injunction orders

20. In **Mrao vs First American Bank of Kenya Limited & 2 Others (2003) eKLR** a *prima facie* case in civil cases was defined thus;

“A case which on the material presented, the court or tribunal properly directing itself will conclude that there exists a right which had apparently been infringed by the opposite party as to call for explanation or rebuttal from the latter.”

21. The purported sale of the deceased's property without authority of the court is intermeddling therewith within the meaning **section 45 of the Law of Succession Act**. A *prima facie* with a reasonable chance of success has therefore been made out.

22. Because of sentimental value usually attached to inheritance, irreparable loss would also be occasioned to the Administrators and other Beneficiaries of the Estate if the Application is not allowed. This condition has been satisfied as well.

23. Owing to the findings as above, it is unnecessary to determine where the balance of convenience lies.

24. In the result, the Application dated 20th January 2025 is allowed in terms of prayer 2, and the costs thereof shall be in the Cause. The court, however, declines to issue eviction orders at this point.

J. M. NANG'EA, JUDGE.

Ruling delivered virtually at Nakuru this 28th day of October, 2025.

In the presence of:-

Mr Ouma Advocate for Mr Bore Advocate for the 1st Administrator.

Mr Cheruiyot Advocate for the 2nd Administrator.

Ms Githae Advocate for the Respondents.

C/A (Jeniffer).

J. M. NANG'EA, JUDGE.