

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 156 OF 2017

WENCILAUS BARASA BUSHEBI.....PLAINTIFF

VERSUS

PASCAL NETIA.....DEFENDANT

JUDGEMENT

The plaintiff's case is that at all material times, land parcel No. E. Wanga Malaha 483 is registered in the name of Toroni Bushebi Mateba now deceased. At all material time the estate of the deceased Toroni Bushebi Mateba herein referred to as the deceased was basis for Succession Case in Kakamega HCCC. Succession Cause No. 395 of 1998 where the petitioners were (inclusive of the plaintiff) Philis Toroni, Timothy Toroni & Gerald Toroni. On 7/5/2012, the High Court issued a grant in the above Succession case whereby the plaintiff was awarded 2.97 acres together with the rest. Whereas subdivision, mutation and transfer is still in the offing, the plaintiff has learnt with utter disbelief the flagrant trespass and intermeddling by the defendant on the said plaintiff's portion above whereby the said defendant is actuated by malice. The plaintiff prays for orders of eviction and injunction against defendant from the suit land permanently besides reserving rights to pursue criminal court under intermeddling procedure under the Succession Act. The plaintiff prays for orders:-

- (i) For permanent injunction and eviction from suit land.
- (ii) General damages for trespass.
- (iii) Costs.

The defendant was served but failed to file any defence. PW1, the plaintiff testified that, the estate of the deceased Toroni Bushebi Mateba herein referred to as the deceased was the basis for Succession in Kakamega HCCC. Succession Cause No. 395 of 1998 where the petitioners were (inclusive of the plaintiff) Philis Toroni, Timothy Toroni & Gerald Toroni. On 7/5/2012, the High Court issued a grant in the above Succession Case whereby the plaintiff was awarded 2.97 acres together with the rest. As subdivision, mutation and transfer was still in the offing the defendant has trespassed. The issue for determination in this case is whether or not this court has jurisdiction to entertain this matter. On the issue of jurisdiction of this court, Article 162(2)(b) and 165(3)(a) of the Constitution of Kenya 2010 and Section 13 of the Environment and Land Court Act, 2011 the jurisdiction of the Environment and Land Court is to determination of disputes relating to environment planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, evaluations, mining, minerals and other natural resources, compulsory acquisition of land, land administration and management, public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land and any other dispute relating to environment and land. I wish to refer to the case of John Kimani Njenga v Margaret Wanjiru Kanyiri & others ELC No. 345 Of 2014 where it was held that the ELC Court had jurisdiction to hear and determine disputes, actions and proceedings concerning land. Indeed Section 105 of the Land Act provides as follows;

“The Environment and land Court established under the Environment and land Court Act is vested with the exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act”.

Be that as it may, it is the plaintiff's evidence that the suit land was the subject matter in in Kakamega HCCC. Succession Cause No. 395 of 1998 where the petitioners were (inclusive of the plaintiff) Philis Toroni, Timothy Toroni & Gerald Toroni. On 7/5/2012, the High Court issued a grant in the above succession case whereby the plaintiff was awarded 2.97 acres together with the rest. He produced the confirmation of grant of land parcel No. E. Wanga Malaha 483 PEx2. However, it is his evidence that subdivision is yet to be completed. The plaintiff seeks for orders provided under the Succession Act Cap 160 of the Laws of Kenya. It is under the sole duty of the succession court to administer and distribute the estate of the deceased person and this court is not seized with jurisdiction to do so. The succession process is not complete in this matter. I find this court has no jurisdiction and I strike out this suit with no orders as to costs as it was undefended.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 7TH DAY OF MAY 2019.

N.A. MATHEKA

JUDGE