



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC CASE NO. 49 OF 2019

SALLY CHEPTOO BWAMBOK.....1ST PLAINTIFF

CHRISTINE CHEMELI TAPKEI.....2ND PLAINTIFF

(Suing as the administrators of the estate of HENRY KIPKOGEI BOMET)

VERSUS

KENYA COMMERCIAL BANK LTD.....1ST DEFENDANT

EDWIN KIPLIMO TOO.....2ND DEFENDANT

DIRECTIONS

1. The application dated 28/6/2019 is brought by the plaintiffs under *Order 40 Rules 1, 2 and 3 of the Civil Procedure Rules, Sections 1A, 1B, 3, 3A & 63 of the Civil Procedure Act* seeking the following orders:-

(a) ...spent

(b) That this court be pleased to issue a temporary order of injunction restraining the 1st defendant/respondent, their servants or agents or anyone claiming through them from advertising, offering for sale by way of a public auction, private treaty or in whatsoever manner dealing with the suit property, Kaplamai/Sirende Block 2/Ngonyek/550 pending the hearing and determination of application and pending the hearing and determination of this suit or until further orders from this court.

(c) Costs of this suit.

2. The application is supported by the affidavit of the 1st plaintiff on her behalf and on behalf of the 2nd plaintiff sworn on 28/6/2019.

3. The grounds relied upon are that the suit property is registered in the name of **Henry Kipkogei Bomet** who died intestate on 20/4/2017; that sometimes in **July, 2018**, the 2nd respondent fraudulently and corruptly caused the suit property to be charged to the 1st respondent long after the death of the deceased; that the applicants were not aware of this charge until when the 1st applicant was served with a Statutory Notice under **Section 90 (1), (2) and (3e)** of the Land Act; that the said notice has since lapsed and there is impending danger of a sale of the suit property; that the said charge is illegal and is meant to deny the rightful beneficiaries of the estate of the deceased their rightful share in the estate; that the applicants have authority to sue on behalf of the estate of the deceased and the balance of convenience is in favour of the applicants.

4. I have considered the application which prompted me to examine the prayers in plaint. It appears that the plaintiffs are seeking a declaration that the charge registered against the title No. **Kaplamai/Sirende Block 2/Ngonyek/550** is tainted with illegality and an order that the 1st defendant discharge the title to the suit land and release it to the plaintiffs.

5. In line with the Court of Appeal holding in **Co-operative Bank of Kenya Limited -vs- Patrick Kangethe Njuguna and 5 others - MSA Civil Appeal No. 83 of 2016, [2017] eKLR** I direct that this matter be placed before the Presiding Judge of the High Court Kitale as that is the court possessed of jurisdiction in the matter, for hearing and final disposal.

6. The interim orders earlier granted are extended for a period of seven (7) days.

Dated, signed and delivered at Kitale on this 7th day of November, 2019.

MWANGI NJOROGI

JUDGE

7/11/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Samba for plaintiff/applicant

Mr. Ingosi for defendant/respondent

COURT

Directions read in open court.

MWANGI NJOROGI

JUDGE

7/11/2019