



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 46 OF 2017

FORMELY NAKURU ELC NO. 51 OF 2013

OLE NAADUKILA & 19 OTHERS.....PLAINTIFF

-VERSUS-

OLE MESHUKO & 25 OTHERS.....DEFENDANT

RULING

The Application before me is the Notice of Motion dated 23rd January, 2018 seeking orders restraining the Defendants/Respondents from burying the remains of Rasita Ole Naenkop on land parcel No. 491. The Application was based on the grounds that the family and friends are preparing to bury him on land parcel No. 491 which is the subject suit.

The Applicants contends that the burial of the body will prejudice against them in the event that the case is ruled in their favour.

The Application was supported by the Affidavit of one John Tante Ole Meshuko who averred that he had the authority and permission of all the other defendants to swear this affidavit.

In the affidavit he avers that the remains of the deceased are set to be buried on land parcel No. 491 within the Kipise adjudication section which is part of the suit land between the parties herein.

The Applicant contends that in the event that the suit is determined in their favour they will suffer as a result of the existence of a stranger's grave on their land and as a result he seeks the Respondents be restrained from burying the deceased on the said land.

The Application was opposed by the Respondent who filed a Replying Affidavit and states that their brother died on 17th January, 2018 and his burial was set for the 26th January, 2018 when they were served with a court order stopping the burial.

The Respondent contend that the Applicant had no legitimate claim over parcel No. 491 Kipise Adjudication section and that the Applicant has not satisfied the court on the grant of the relief of an injunction.

The Respondent further state that the Appellant had filed a similar Application in 2014 stopping the burial of the deceased's mother which application was based on similar grounds but the same was not allowed and the deceased's mother was buried on the same parcel of land.

I have read the application before me and replying affidavit in opposition to the same and the submissions made by counsel representing the parties and having considered the same the issue for determination before me is whether the applicant has satisfied the condition for grant of the relief of injunction as exposed under the **GIELA -VERSUS- CASSMAN BROWN CASE**.

In seeking for the grant of injunction a party must establish a prima facie case with a probability of success, damages will not be adequate compensation and lastly the balance of convenience tilts in his favour.

In the instant case the applicant despite merely stating that he has an interest in parcel No. 491 of Kipise adjudication section has not placed before me any material to support the above claim. He has not shown me any register or minutes from the land adjudication office that the parcel is actually registered in his name and for this reason alone he has failed the first test of establishing a prima facie case and hence his Application fails.

Having heard submissions by counsel and the record before the deceased mother was buried on the same land in 2014 after a similar application filed by the applicant was delivered by court and from this the balance of convenience actually tilts in favour of the respondents.

In view of the above I dismiss the application dated 23rd January, 2018 and I vacate the interim orders that I granted on 23rd January, 2018.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **31st** day of **JANUARY, 2018**

Mohammed Noor Kullow

Judge

31/1/18

In the presence of:

Counsels

parties

Mohamed Noor Kullow

Judge

31/1/18