



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KITALE
LAND CASE NO. 18 OF 2018

JULIUS WASILWA NATE
(Suing as Administrator of the Estate of
CHILSON MUUMBWA NATE).....PLAINTIFF

VERSUS

ROBERT KELONGI.....1ST DEFENDANT
PAUL SIRENGO2ND DEFENDANT
JIM MISIKO.....3RD DEFENDANT
KEVIN SIRENGO4TH DEFENDANT
SAMUEL LUSWETI.....5TH DEFENDANT

RULING

1. The application dated 13/2/2018 seeks an order of temporary injunction to restrain the defendants from trespassing, leasing, selling, dealing or in any manner whatsoever interfering with the portion measuring **1.09 acres** of the suit land in Title No. **Kiminini/Matunda Block 7/164** pending the hearing and determination of this suit.
2. The grounds upon which the application is made is that the land is registered in the name of **Chilson Muumbwa Nate** (deceased), and as such forms part of the Estate of the deceased to which the defendants, being not beneficiaries, are not entitled. It is claimed that the defendants are wasting the land by destroying the trees thereon and that a restraining order is needed.
3. A copy of the title to the land is exhibited; it is in the name of one Chilson Nate, whom I will presume is the deceased. The applicant has not exhibited any grant save a Limited Grant of Letters of Administration ad Litem to the Estate of the deceased. Some photographs attached to the supporting affidavit show some felled trees and wooden posts freshly erected on the land.
4. Samuel Lusweti the 6th defendant filed a replying affidavit on behalf of all defendants. The defendants’ affidavit seems to acknowledge that the land in question, Kiminini/Matunda Block 7/164 belonged to their late grandfather. The defendants appear to doubt the bona fides of actions of the

applicant whom they say has irregularly disposed of much of the property that comprised their late grandfather's Estate; they acknowledge that the plaintiff is their stepfather and aver that he sold all the properties "except" the suit land when their fathers died; the defendants state that they need a share of the property so they can get a place to live on. They accuse the plaintiff of also disposing of properties belonging to their late fathers located at Sikhendu when they were young and further aver that their clan has ruled that they have a share of the remaining land.

5. They aver that they have no intention to sell the land herein but to live on it and that it is the plaintiff who has put up a sign advertising the land for sale.

6. I have considered the application and the response. There seems to be a simmering succession dispute between the parties which in my view is suitable for resolution by the High Court. There is also no response to the defendants' replying affidavit and those facts stated therein cannot be casually dismissed.

7. In the absence of any other documents to rely on, I will order that the status quo of the suit land be maintained in that neither the plaintiff nor the defendants shall dispose of any interest in or commit acts of waste on the land till the hearing and determination of this suit.

Dated, signed and delivered at Kitale on this **20th** day of **March, 2018**.

MWANGI NJOROGE

JUDGE

20/3/2018

Coram:

Before - Mwangi Njoroge - Judge

Court Assistant - Picoty

N/A for plaintiff

N/A for defendant

COURT

Ruling read in open court in the absence of parties.

MWANGI NJOROGE

JUDGE

20/3/2018