



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

MISCELLANEOUS ELC CASE NO. 31 OF 2017

STEPHENE MURUNGA LANYA.....APPLICANT

VERSUS

RUTH LANYA.....RESPONDENT

RULING

This application is dated 14th September 2017 and brought pursuant to sections 13, 14 and 19 of the Environment and Land Court Act, Cap 12A, Laws of Kenya, Section 45 of the Law of Succession Act, Cap 160, Laws of Kenya, Sections 1A, 1B, 3, 3A & 63 (e) of the Civil Procedure Act, Cap 21 Laws of Kenya and Order 51 Rule 1 of the Civil Procedure Rules 2010, and other enabling provisions of the Law seeking the following orders;

1. The instant application be certified urgent and the service thereof be dispensed with in the first instance.
2. This honourable court be pleased to issue an injunction order restraining the respondent from disposing of the land parcel registration NO. MARAMA/SHINAMWENYULI/1220 duly registered in the name of the late ENOCK LANYA MULAMA – DECEASED and comprised in the deceased estate, pending succession of the deceased estate.
3. Pending succession of the estate of the late ENOCK LANYA MULAMA-DECEASED the Kakamega District (County) land Registrar be directed not to and or inhibited from registering any dealing with the land title NO. MARAMA/SHINAMWENYULI/1220.
4. Respondent be condemned to pay costs of this application.

The applicant submitted that, he is the Administrator ad litem of the estate of the late Enock Lanya Mulama – Deceased (Annexed is a copy of the Limited Grant (Letters of Administration) Ad litem, marked SL1). That the late ENOCK LANYA MULAMA – DECEASED is the duly registered owner of the Land Parcel No. MARAMA/SHINAMWENYULI/1220 (Annexed are copies of the title deed and the certificate of search, marked SL 2 & 3) That the said deceased died on 11th August, 1994 and was survived with several dependants and beneficiaries and his estate is yet to undergo succession. (Annexed is a copy of the death certificate marked SL 4). That the deceased estate has several dependants and beneficiaries.

That the respondent who is one of the widows of the deceased is disposing of part of the deceased estate comprised in the suit land without consulting other families members and yet the deceased estate is yet to undergo succession. That the respondent has already disposed of approximately 5 acres comprised in the suit land to the detriment of other beneficiaries. That the respondent is not an administrator of the deceased estate and as such she lacks mandate, authority, powers and capacity to dispose of the deceased estate. That the respondent's actions illegal and amount to intermeddling with the deceased estate which a criminal offence punishable under section 45 of the Law of Succession Act, Cap 160 Laws of Kenya. That it is therefore in the interest of justice that the respondent be restrained by way of an injunction from disposing of the deceased estate pending succession. That it is also important that the Kakamega District (County) land Registrar be inhibited from registering any dealing with the suit land pending succession.

The gist of his application is to protect, preserve and conserve the deceased estate pending succession. The respondent has not denied disposing of the deceased property comprised in MARAMA/SHINAMWENYULI/1220 to the detriment of other beneficiaries and yet she is not the administrator of the deceased estate. The respondent appears to justify her illegal actions in disposing of the deceased estate and yet the deceased died intestate and as such all the beneficiaries are entitled to his estate. The respondent has no authority, mandate and power to dispose of the deceased estate. It follows therefore that it is in the interest of justice and all parties that the respondent be restrained by way of injunction to dispose of the deceased estate comprised in the said parcel of land pending succession over the deceased estate. That most of the issues raised by the respondent will be dealt with by the succession court at the appropriate time but for now what is important is for this honourable court to protect, preserve and conserve the deceased estate for the benefit of all the beneficiaries. That unless the honourable court restrains the respondent from disposing of the deceased estate comprised in land parcel No. MARAMA/SHINAMWENYULI/1220, the beneficiaries of the deceased will suffer irreparably.

The respondent submitted that, ENOCK LANYA MULAMA died in the year 11/8/1994 and she was the 3rd wife. The first wife, ALICE KHATENJE LANYA (deceased) has eight children. The said ALICE KHATENJE LANYA had her parcel in KITALE TRANS NZOIA SCHEME plot NO. 58 measuring 68 acres together with her children. On the demise of ALICE together with her children, were all buried in plot NO. 58- Trans Nzoia Scheme.

ENOCK LANYA MULAMA had another wife MARY OMBWAYO LANYA (Deceased) who sired ten children. They all stayed on Plot No. KHALABA/MATUNGU and the same measuring 28 acres. Mary plus her children were buried there which during her husband ENOCK LANYA MULAMA who was buried next to MARRIANA OPONDO who was the mother. ENOCK took her with her two sons and settled her at MARAMA/SHINAMWENYULI/1220 measuring only 9 acres. She has 4 children and several grandchildren.

Ruth's family stays at MARAMA/SHINAMWENYULI/1220 measuring 9 acres. The deceased, ENOCK LANYA MULAMA had many other properties namely;

1. Bungoma Town, he had Khalaba Drycleaners.
2. A plot on which STEPHEN MURUNGA stays upto the present time.
3. Lorry No. KUB 107-sold by the first house.
4. Pick up – sold by the 1st house.
5. His motor vehicle a solon sold by the 1st house.
6. Plot on Moi's Bridge, and MAILI TISA sold by the 1st house.
7. Maili 7-9 acres of land sold by the 1st house.

The Notice of Motion should be struck off with costs to the respondent.

This court has carefully considered both the applicant's and the respondent's submissions and the annexures therein. The principals governing the grant of interlocutory injunction are clear beyond peradventure. As stated in the case of **Giella vs. Cassman Brown (1973) EA 358**.

"The conditions of granting an injunction are now, I think well settled in East Africa. First an applicant must show a prima facie case with a probability of success. Secondly an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience."

Furthermore, as elaborated in the case of **Mrao Ltd vs. First American Bank of Kenya Ltd & 2 others (2003)** Hon Bosire J.A. held that:

"So what is a prima facie case? I would say that it is a case in which on the material presented to the court or tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter"

Further he goes on to state that "*..... a prime facie case is more than an arguable case, it is not sufficient to raise issues. The evidence must show an infringement of a right, and the probability of the applicant's case upon trial. That is clearly a standard which is higher than an arguable case.*"

It is premised on the following grounds; that the late ENOCK LANYA MULAMA-DECEASED is the registered owner of the Land Parcel No. MARAMA/SHINAMWENYULI/1220. That the said deceased died on 11th August, 1994 and was survived with several dependants and beneficiaries and his estate is yet to undergo succession. That one of the widows of the deceased is disposing of part of the deceased estate comprised in the suit land. That she has already disposed of approximately 5 acres of the land comprised in the suit land to the 3rd parties. That it is in the interest of justice that the respondent be restrained by way of an injunction from disposing of the deceased estate pending succession. That it is also important the Kakamega District (County) Land Registrar be inhibited from registering any dealing with the suit land pending succession. That orders sought herein are in the interest of justice.

There is no evidence that the respondent is in the process of disposing the suit land. Indeed the applicant states that the deceased land is yet to undergo succession. The plaintiff has no locus to sell the land. Secondly this matter appears to be one best dealt with by the civil high court first to be able to distribute the deceased property to the beneficiaries and the dependants. I find that the applicant has failed to show a prima facie case with a probability of success. The applicant has failed to show that they might otherwise suffer irreparable injury, which would not adequately compensated by an award of damages. I find that this application has no merit and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 6TH DAY OF MARCH 2018.

N.A. MATHEKA

JUDGE