

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC MISC. NO. 14 OF 2017

SARAH LILIAN LUNANI.....APPLICANT

VERSUS

CHRISTOHER NYONGESA MAKOKHA

JUDITH VULIMO

PETER LUVONGA MUCHIKA

FESTUS MUCHIKA.....RESPONDENTS

RULING

This application is dated 4th May 2017 and brought under section 1A, 1B, 3 and 3A of the Civil Procedure Act and Article 159 of the Constitution of Kenya seeking the following orders;

1. That the application hereto be certified urgent and heard exparte in the first instance.
2. That an injunction do issue against the respondent either in person or through their assignees, agents and or servants from trespassing, leasing, constructing houses or structures and or doing any development in respect to the one and a half acres parcel in the land parcel number KAKAMEGA/MATSAKHA/47 and which land the applicant together with her late husband Muchika Makokha bought from the 1st respondent pending the hearing and final determination of the application hereto inter-parties and or until further orders.
3. That costs of this application be provided for.

The applicant submitted that she is the bonafide beneficiary of one and half acres of land in the land parcel No. Kakamega/Matsakha/47 (estate of the deceased Makokha Luvonga alias Makokha Shayo) which she bought together with her late husband Muchika Makokha also known as David Muchika Makokha alias from the first respondent who bought another land and or reside at Matunda (copy of the agreement annexed hereto and marked SLL 1).That the foresaid one and a half acres of land was the share or gift of the 1st respondent which he was given by the deceased Makokha Luvonga alias Makokha Shayo who died before transferring the same to him.That the 1st respondent is the first born of the deceased Makokha Luvonga alias Makokha Shayo.That the 1st respondent is also the elder brother of her late husband Muchika Makokha and hence he is her brother-in-law. That following the demise of her late husband Muchika Makokha she has survived him as far as the purchase of the aforesaid one and half acres of land is concerned (a copy of his death certificate marked SLL2).That the 1st respondent together with 2nd respondent (co wife or widow), 3rd respondent (step son) and 4th (step son) respondent have threatened to enter the said one and half acres of land by force, construct houses or structures thereon, lease, sell and or dispossess her of the same. It is in the interest of justice that an injunction do issue restraining the respondents, their assigns, personal representatives, agents and or servants from trespassing, leasing, selling, constructing houses or structures and or doing any development on the aforesaid one and a half acres of land in the estate of the deceased Makokha Luvonga alias Makokha Shayo pending the hearing and determination of this application inter-parties or until further orders of this honourable court. That furthermore the 1st respondent as the first son of the deceased ought to lead the family of the late Makokha Luvonga alias Makokha Shayo accordingly in filing succession over his estate instead of wasting and intermeddling with the same. That in the circumstances it will be just and fair if the court issued the relief sought in my application thereto.

The respondents were served but failed to attend court or file any papers. This court has considered the applicant's application. It is based on the affidavit of Sarah Lilian Lunani grounds that the estate of the deceased is being wasted and intermeddled with by the respondents. That the respondents want to construct houses or structures and or dispossess the applicant one and half acres of land which she bought together with her late husband Muchikha Makokha from the 1st respondent in the land parcel number Kakamega/Matsakha/47. That the applicant is the sole bonafide beneficiary of the aforesaid one and half acres of land in the estate of the deceased Makokha Luvonga alias Makokha Shayo since she has survived her late husband Muchika Makokha. That the applicant will suffer irreparable loss and damage unless orders sought are expeditiously grated.

No evidence has been annexed on the description of the said land. No evidence of the relationship of the applicant with the deceased Muchika Makokha to determine her locus in this matter. This appears to be a succession matter and the applicant is advised to pursue the same. This application has no merit and I dismiss the same.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 29TH DAY OF MAY 2018.

N.A. MATHEKA

JUDGE