



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO.152 OF 2017

MARTIN SHIKUKU WAMALWA & 17 OTHERS.....PLAINTIFF/RESPONDENT

VERSUS

APPOLOS KENNEDY MWANGI.....DEFENDANT/RESPONDENT

AND

EVERLYNE NANYAMA WANYONYI.....APPLICANT

R U L I N G

1. By an application dated 19/3/2018 the applicant sought the following orders:-

- (1) That this honourable court be pleased to certify this application urgent and the same shall be heard ex-parte in the final instance.
- (2) That this honourable court be pleased to make an order enjoining the applicant, Everlyne Nanyama Wanyonyi as one of the plaintiffs herein.
- (3) That costs of this application be provided for.

2. The grounds on which the said application is made are as follows:-

- (a) That the applicant is the personal representative of the estate of her late husband Bernard Anyama Masolo who died on the 10th August, 2015.
- (b) That the applicant petitioned for Letters of Administration Intestate of the deceased and issued with a Grant of which was subsequently confirmed on the 23rd August, 2017 vide Kitale CM P&A No. 90 of 2016.
- (c) That prior to the death of the deceased, he had purchased 5 acres of land from Title No. Waitaluk/Kapkoi Block 9/Gutongorio/4 measuring 5 acres where they have lived since and after the death of the deceased.
- (d) That the agreement which the 3rd plaintiff/respondent is replying on is a forgery and urge the court to look to its authenticity as the signature of the Advocates who witnessed, is not the same as the one signed on the agreement dated 22/10/2008.
- (e) That a right to be heard is one of the cardinal principals of natural justice.
- (f) That enjoining the applicant as one of the plaintiffs will enable the court to hear and determine the real issues in question.
- (g) That the plaintiffs and more particularly the 3rd plaintiff who is my mother in-law has secretly without the applicant's knowledge come to court claiming the whole portion of the 5 acres to be hers.
- (h) That from the confirmed grant the said portion is supposed to be shared equally and where 3rd plaintiff is entitled to only 1 acre.
- (i) That the applicant is fearing that in the event the plaintiffs succeeds in this suit, then the applicant and the children of the

deceased will be rendered landless and be evicted from the 5 acres where they have lived since and after the death of the deceased.

3. The application is supported by the affidavit of the Applicant dated 19/3/2018.

4. It appears to me that the applicant's claim is that her husband had purchased land which now the 3rd plaintiff is claiming in this suit. Her claim against the defendants is the similar to that of the plaintiffs. However she has an additional claim against the third plaintiff which in my view can be ventilated concurrently with the claims against the defendants.

5. I therefore find it proper to enjoin the applicant to the suit so that her claim can be heard alongside the claims of the other plaintiffs.

6. I therefore grant the application dated **19/3/2018** and order that the applicant be enjoined as the 19th plaintiff and that the plaintiffs shall amend their plaint to reflect the change. Further the applicant shall when so enjoined serve the 3rd plaintiff formally with her notice of her claim against her setting out all the relevant particulars as required by law within 21 days of this order.

Dated, signed and delivered at Kitale on this **12th** day of **July, 2018**.

MWANGI NJOROGE

JUDGE

12/7/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Shikuku for the plaintiffs

Applicant Eveline Nanyama (present in person)

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

12/7/2018