



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 220 OF 2017

BAKARI MAKOKHA suing for and on behalf of

The estate of ISSA MATERE MUNYANYA PLAINTIFF/APPLICANT

-VERSUS-

SYLVESTER ODHIAMBO WABUYABO 1STDEFENDANT/RESPONDENT

ALI ABDALLA ALI 2ND DEFENDANT/RESPONDENT

RULING

This application is dated 19th February 2018 and seeks the following orders;

1. That this application be certified as urgent and heard ex-parte in the 1st instance as service may be dispensed with.
2. That the 1st respondent by himself, his agent, workers, family members and/or anybody purporting to work under his instructions be and are hereby restrained from tilling, ploughing, wasting and/or doing anything in L.P No. N/W/Mayoni/845 until the hearing and determination of this orders of this honourable court.
3. That costs of this application be borne by the 1st respondent.

It is based on the grounds that, the 1st respondent on 18/9/2017 admitted that he is not the proprietor of L.P No. N/W/Mayoni/845. That the applicant's biological parents remains were interred /buried in L.P No. N/W/Mayoni/845. That farmers in western part of Kenya have started preparing their land for long season rainplanting the 1st respondent inclusive. That despite the pending of the application by the 2nd respondent to have the subject land re-survey, he has slashed, trashed and burnt the wastage on the land ready to plough the same. That the 1st respondent registered their late father as the proprietor of the subject land after he had passed on intestate. That the subject land is losing its value by the continuous usage by the 1st respondent. That it's in the interest of justice that the orders sought be granted as no injustice shall be caused to the 1st respondent.

The 1st respondent/the defendant denies each and every allegation of facts as he have no locus Standi to be sued under this matter since the land parcel N/Wanga/Mayoni/845 is registered in the names of his late father Nicholas Wabuyabo now deceased (see exhibit Ab1 and Ab2). That the contents prayed by the Applicant herein contradicts the privilege of law since no succession proceeding has been done in respect to the land parcel N/Wanga/Mayoni 845.

This court has carefully considered the submissions and the annexures therein. The principals governing the grant of interlocutory injunction are clear. 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 a finding of fact that the suit parcel of land in this matter namely L.P No. N/W/Mayoni/845 belongs to a third party who is not party to this suit, namely Nicholas Wabuyabo. I find that the applicant has not shown a prima facie case with a probability of success. Secondly it has not been shown that unless interlocutory injunction the applicant is granted the applicant might suffer irreparable injury, which would not adequately compensated by an award of damages. I find 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 10TH DAY OF JULY 2018.

N.A. MATHEKA

JUDGE