



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 376 OF 2017

PETER MAINA KIBIRA.....1ST PLAINTIFF

PETER SANKALE EKITASHORI.....2ND PLAINTIFF

PHILIP THUO MWANGI.....3RD PLAINTIFF

(Suing as the legal representatives of the Estate of the late Sururu Ole Turere)

-VERSUS-

WILLIAM KANTET OLE KILESI.....1ST DEFENDANT

THE DISTRICT LANDS REGISTRAR NAROK.....2ND DEFENDANT

RULING

The Applicant has by way of a Notice of Motion dated 13th April, 2017 sought for an order of injunction restraining the Defendant, themselves, and/or agent from offering for sale, charging, sub-dividing and transferring of a parcel of land known as **NAROK /CIS MARA/OLOPITO/493**. The Applicants brought the application as the suit herein on the representative of the estate of the late Sululu Ole Turere.

The Applicants alleged that the suit land was fraudulently transferred in the name of the 1st Respondent without the taking of Letters of Administration for the estate of the late Sururu Ole Turere. The Applicants were apprehensive that the Respondents will deal with the suit land in a manner detrimental to the estate of the deceased particulars selling and transferring the land to an innocent third party making its recovery later impossible.

The Application was further supported by the Supporting Affidavit of Peter Sankale Kitashori who alleges that the deceased had prior to his death in May, 2006 sold 14 acres of his parcel of land No. **NAROK/CIS MARA/OLOPITO 493** to Lelushua Vision Welfare Group. However, transaction could not be completed as the deceased left no wife and children.

That in the year 2015 they found out that the land was transferred in 2015 to the 1st Respondent. The Applicant alleges that the transaction was fraudulent and hence seeks the interest of justice that the suit land be preserved pending the hearing and determination of the suit.

The 1st Respondent opposed the Application herein and has filed a Replying Affidavit.

The Respondent allege that he is the registered owner of the parcel known as **CIS**

MARA/OLOPITO/493 and state that he purchased the suit land and has attached a copy of the title.

The Respondent further alleges that he is in possession of the land and that the parcel of the said land does not constitute part of the deceased estate and that the Applicants have not clearly adduced evidence as to why the subject land was not transferred to them.

The Respondent further states that the suit offends the provisions of order 4 '2' of the Civil Procedure Rules.

The 1st Respondent together with Replying Affidavit state by way of opposing the Application filed a Preliminary Objection on point of law which in a nut shell stated that the purported sale between the Applicant and the Respondent offends the provisions of the Land Control Act and that the pleadings offends the provisions of order 4 (2) of the Civil Procedure Rules.

I have read the said Application together with the Applicant's Supporting Affidavit and the annexures thereon.

The Applicant in support of his Application has annexed a copy of a Sale Agreement dated 4th September, 2003 between the deceased Sururu Ole Turere and Leleshua Vision Self Help Group. In the said Sale Agreement what was purchased were 14 acres of land out of the parcel known as **CIS MARA/OLOPITO/493**.

There was also various payment acknowledgment receipts and number of mutation and forms from the lands office.

The Respondent has in opposing the application averred that he is the sole proprietor of the parcel known as **CIS MARA/OLOPITO/493** and attached title deed issued on 11th November, 2015. The Respondent does not state how he acquired the said land whether it was through purchase or allocation or otherwise.

The Applicants also claim to have bought 14 acres of land from land that has similar title number. The Respondents have not disclosed whether the land the Applicants are referring to is not that the Applicant has purchased.

The above position in my view raises serious triable issues that can only be determined at a full hearing where evidence can be heard.

On the above am satisfied that the Applicant have established a prima facie case with probability of success and I grant the orders sought in the Application dated 13th April, 2017.

As for the Notice of Preliminary Objection is a point that am of the view that these points are merely technical that will hinder the dispensation of substantive justice and I will disallow the same in line with the provision of Article 159(2) (d) of the Constitution of Kenya 2010 where the overriding principle of Justice shall prevail over artificial technicalities.

Dated, Signed and Delivered in open court at NAROK on this 6th day of April, 2017

Mohammed Noor Kullow

Judge

In the presence of:-

Applicants

Counsel for the Defendants

CA:Chuma