



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 507 OF 2016

JAPHETH BORE PLAINTIFF

VERSUS

RHODA CHEBON..... RESPONDENT

RULING

(An application for injunction to restrain the defendant from interfering with applicant’s quiet possession of the suit property; applicant alleging that suit property is part of an estate in respect of which he is the administrator; application allowed)

1. The plaintiff filed this suit on 21st November 2016 through plaint dated 14th November 2016. The plaintiff seeks judgment against the defendant for:

- a. A permanent injunction restraining the defendant, her servants, agents and/or assigns from dealing with, interfering with the quiet possession, use and enjoyment of the estate of the deceased and to stop any act that is inconsistent with the plaintiff’s right as the administrator of all that parcel of land Kambiya Moto Block 1/69 and in the alternative eviction orders against the Defendant/Respondent.*
- b. Cost of this suit.*

Together with the plaint the plaintiff also filed Notice of Motion dated 14th November 2016 in which he sought among others the following orders:

- 1. (Spent)*
- 2. (Spent)*
- 3. THAT pending the hearing and final determination of this suit an interlocutory injunction be granted in favour of the Plaintiff/applicant restraining the Defendant by herself, her agents and/or her servants from fencing off, entering and interfering with the deceased parcel of land known as KAMBI YA MOTO BLOCK 1/69.*
- 4. THAT the cost (sic) of this application be provided for.*

2. The application is brought under order 40 Rules 1,2 and 3 of the Civil Procedure Rules, 2010. It is supported by the plaintiff’s affidavit. The plaintiff deposes that he is the administrator of the estate of Ruth Talaa Bore (deceased) pursuant to a grant issued by the Magistrate’s Court at Kabarnet and which

grant was later confirmed on 17th October 2016. That the parcel of land known as KambiYa Moto Block 1/69 belonged to the deceased and was included in the list of properties when the aforesaid grant was confirmed. That the defendant forcefully entered the suit property on 3rd November 2016 and erected a fence. The plaintiff therefore urges the court to grant the orders sought.

3. The defendant has opposed the application through her replying affidavit sworn and filed in court on 19th April 2017. The defendant deposes that she is the administrator of the estate of her late mother SoteChebon pursuant to grant issued on 26th October 2015 by the High Court at Nakuru. That the suit property was acquired pursuant to a joint shareholding by the late Sote Chebon and Ruth Talaa Bore in Morop Company Limited. That though the shares were registered in the name of Ruth Talaa Bore, the shares were bought through equal contributions by Ruth Talaa Bore and SoteChebon. Consequently, the 15 acres allotted to Ruth Talaa Bore at Morop Farm and 5 acres allotted to Ruth Talaa Bore at Bahati farm were to be shared equally such that each would get a total of ten (10) acres. That Ruth Talaa Bore took five acres in the Bahati farm and that therefore the estate of Ruth Talaa Bore was now only entitled to 5 acres from the parcel known as Kampiya Moto Block 1/69. The defendant deposed that the aforesaid mode of sharing the properties was supported by Morop Company Limited and that as a result the company put her in possession of her late mother's share. The defendant therefore urged the court to dismiss the application.

4. I have considered the application, the affidavits in support and in opposition to it and submissions by counsel. I note that the parties are agreed that the issue of ownership of the property known as Kampiya Moto block 1/69 was dealt with in Senior Principal Magistrate's Court succession cause No. 18 of 2014 (Kabarnet) wherein the property was included in the list of the deceased's properties during the confirmation of grant. The defendant has deposed in her replying affidavit that she participated in the aforesaid succession proceedings as an objector and urged the court not to include the property. The court heard her objection and upon considering the matter came to a conclusion that the property be included. The defendant has however not told the court whether she appealed against the subordinate court's decision.

In view of the decision of the subordinate court which does not appear to have been challenged, it is not open to the defendant or indeed Morop Company Limited to come up with their own interpretation of who is entitled to the suit land. They are all bound by the court's decision. In the circumstances I find that plaintiff has established a prima facie case with a probability of success.

5. Will damages be an adequate remedy to the plaintiff? The dispute involves land. Land has become a precious and cherished asset in Kenya whose value is not always easy to quantify, unless it is the subject of a commercial transaction. In this particular case, the suit property is part of an estate with other heirs besides the plaintiff, as can be seen in the certificate of confirmation of grant. I therefore find that damages will not be an adequate remedy.

So as to preserve the suit property I grant an interlocutory injunction restraining the Defendant by herself, her agents and/or her servants from fencing off, entering and interfering with the parcel of land known as KAMBI YA MOTO BLOCK 1/69. The injunction will be limited to a period of one year from the date of delivery of this ruling. The limitation is necessary to ensure that the plaintiff prosecutes the main suit promptly. Costs to the plaintiff.

Dated, signed and delivered in open court at Nakuru this 13th day of June 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Ombati for the Plaintiff/Applicant

No appearance for the Respondent

Court Assistant: Gichaba