



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC NO. 7 OF 2017

FANICE AYUMA ODINGA (*Suing on behalf of the estate of the late*

JOHN ONDINGA SUMBA (deceased):.....: PLAINTIFF/APPLICANT

VERSUS

BOAZ OBURENYI SAMUEL:.....:DEFENDANT/RESPONDENT

RULING

This application is dated 8th February 2017 and is brought under order 40 rules 2 (1) and 3 (1) (2) (3) and 4 (1) (2) (3) (4) of the civil procedure rules praying for the following orders:-

1. That the application be heard ex-parte in the 1st instance.
2. That the honourable court be pleased to restrain the defendant/respondent from doing any further development on land parcel number WEST BUNYORE/ITUMBU/1027 pending the hearing and determination of this application inter-parties.
3. That the honourable court be pleased to restrain the defendant/respondent from doing any further development on land parcel number WEST BUNYORE/ITUMBU/1027 pending the hearing and determination of this suit.
4. The costs of this application be provided for.

The application is based on the supporting affidavit and the following grounds; that the plaintiff/applicant is the administrator of the estate of the late John Odinga Sumba and the defendant/respondent is doing developments on the suit land without the consent of the administrator. The defendant/respondent is not entitled to occupy and develop the suit land and the actions of the defendant/respondent any result in an outbreak of violence and bloodshed. It is in the interest of public tranquility and justice that the above orders be granted and he defendant/respondent shall not suffer any loss if the above orders are granted.

The applicant submitted that, she is the administrator of the estate of the late John Odinga Sumba comprising land parcel number WEST BUNYORE/ITUMBU/1027 (Annexed is a letter of administration Marked FAO1) That the defendant/respondent trespassed into the estate and he is doing various developments in the estate without my consent and or any authority from court. The actions of the defendant/respondent have created animosity between the family of the deceased and his family. That the actions of the defendant/respondent may result in an outbreak of violence and bloodshed between the two families unless stopped and the defendant/respondent is not entitled to occupy and develop the estate since he is not a beneficiary of the estate. That in the above circumstances the plaintiff/applicant prays

that the defendant/respondent be restrained from doing any further development in the estate until this case is heard and determined. That the actions of the defendant/respondent is interfering with her administrative work of the estate and hence the same should be stopped. That the estate of the late John Odinga Sumba will suffer damages unless the defendant/respondent is stopped from his illegal action. The defendant/respondent was served and failed to attend court or file any papers in opposition and the matter proceeded exparte.

This court has considered the plaintiff/applicant's submissions and the supporting affidavit therein. The application being one that seeks injunctions, has to be considered within the principles set out in the case of GIELLA VS CASSMAN BROWN & CO. LTD 1973 E.A 358 and which are:-

- 1. The applicant must show a prima facie case with a probability of success at the trial***
- 2. The applicant must show that unless the order is granted, he will suffer loss which cannot be adequately compensated in damages and,***
- 3. If in doubt, the Court will decide the application on a balance of convenience.***

It must also be added that an interlocutory injunction is an equitable relief and the Court may decline to grant it if it can be shown that the applicant's conduct pertinent to the subject matter of the suit does not meet the approval of a Court of equity.

It is not disputed that the applicant is the administrator of the estate of the late John Odinga Sumba comprising land parcel number WEST BUNYORE/ITUMBU/1027 (Annexed is a letter of administration Marked FAO1). She alleges that the defendant/respondent trespassed into the estate and he is doing various developments in the estate without my consent and or any authority from court. However on perusal of the land register annexed and marked FAO2 in the further affidavit, it would appear that the said land parcel number WEST BUNYORE/ITUMBU/1027 has a restriction registered against it by a third party claiming a portion of the same. For this reason, I find that the plaintiff/applicant has failed to show a prima facie case with a probability of success at the trial. The plaintiff/applicant has also failed to show that unless the order is granted, she will suffer loss which cannot be adequately compensated in damages. I find this application is not merited and I dismiss it with costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 25TH DAY OF JULY 2017.

N.A. MATHEKA

JUDGE