

REPUBLIC OF KENYA.

IN THE LAND AND ENVIRONMENT COURT AT BUNGOMA.

ENVIRONMENT & LAND CASE NO. 119 OF 2016

PRISCILLA NAKHUNGU KULOBA.....APPLICANT

VERSUS.

WYCLIFFE WAMALWA ASIMANI BIKETI.....RESPONDENT

R U L I N G.

[1]. The applicant filed a Notice of Motion dated 5th April, 2017 under Sec. 68 of the Land Registration Act of 2012 and under Sec. 1A 1B and 3A of the Civil Procedure Act and Order 51 rule 1 of the Civil Procedure Rules. He prays for an order of inhibition to be issued prohibiting all dealings over land parcel Bokoli/Misikhu/119 pending the hearing of this suit.

Her application is grounded on the facts that the deceased owner of Bokoli/Misikhu/119 died intestate. That the said land has been transferred unlawfully and that the respondent in a bid to defeat the cause of justice has embarked on the process of obtaining consent of the Land Control Board to subdivide the suit land and transfer the same to 3rd parties. That therefore a preservative order inhibiting the plaintiff from selling to 3rd parties is imperative.

[2]. The respondent filed a replying Affidavit to the notice of Motion and stated that the application is frivolous, scandalous and full of misinformation and calculated to mislead the court and that the same is made in bad faith. The respondent states that upon his father's death, and with the blessings of his brothers and sisters he petitioned Bungoma High Court for letters of administration on his father's estate and was made an administrator therein. Whereupon he caused the suit parcel to be registered in his name as administrator with the blessings of other beneficiaries pending confirmation. That the Succession is at an advanced stage. That he has now filed an application of confirmation and eventual distribution. A copy of Bungoma Succession Cause No. 136 of 2014 dated 08/5/2014 and an affidavit in support of the petition for letters of administration intestate were annexed to his reply.

He states that this court has no jurisdiction to entertain the instant suit, as it is squarely a High Court Succession Court case and since the applicant claims as a beneficiary, her interests can only be canvassed in the Succession Court.

[3]. There is no doubt that the suit land parcel Bokoli/Misikhu/119 belongs to Biketi Wabomba deceased. That the Plaintiff and the defendant are his dependants. It is also not in dispute that there is a pending Succession Cause in No. 136 of 2014. It is also a fact that the defendant was granted letters of administration by the Bungoma High Court on 08/5/2014. It has not been disputed that the matter is pending for determination and/or identification of the heirs and the distribution of the estate of the deceased which includes land parcel subject to this suit. It is in the Succession Cause that the plaintiff should channel her grievances herein.

This court has no jurisdiction on this matter at the moment. There is absolutely no reason of keeping a parallel suit herein. This suit is struck out with no order as to costs. The application herein is also struck out with no order as to costs.

Ruling read in Open Court.

DATED at BUNGOMA this 3rd day of October, 2017.

S. MUKUNYA

JUDGE

In the presence of:

Court Assistant: Gladys/Joy

Mr. Anwar for the defendant

Firm Milimo for the defendant