



**REPUBLIC OF KENYA.**

**IN THE ENVIRONMENT & LAND COURT AT KITALE.**

**LAND CASE NO. 157 OF 2014.**

NELSON MUTEMI

.....APPELLANT/APPLICANT

VERSUS

PETER WANYAMA

NGAIRA.....RESPONDENT

The applicant is the legal representative of the estate of the late John Anyera who died on 15/2/2013 (deceased). The deceased is the father of the applicant as well as one Peter Magaya John who is also deceased. The deceased was a beneficial owner of plot No. 40 at Nalulingo Farm which plot was yet to be registered in the deceased's name as at the time he died.

- The applicant contends that the respondent started claiming part of the deceased's land in 2014 on grounds that he purchased the same from his late brother Peter Magaya John. The applicant contends that Peter Magaya John had no land to sell to the respondent and that what the respondent is doing is to intermeddle on the property of a deceased whose estate has not been distributed.
- I have carefully gone through the applicant's application as well as the opposition to the same by the respondent. In the plaint the applicant is seeking a declaration that the agreement between the respondent and his late brother Peter Magaya John be declared null and void. He is also seeking a permanent injunction against the respondent from interfering with plot No. 40 at Nalulingo Farm.
- In the present case, the respondent bought land from the applicant's brother in 2012. The respondent took possession in December, 2012 as per the sale agreement. The respondent planted maize which the applicant destroyed leading to the applicant being charged in a criminal case. There is a letter from the local chief confirming that the land in issue belongs to the respondent. The applicant is not contesting the fact that the respondent bought the land from his late brother. What he seems to contest is the legality of that sale. The deceased's land had been sub-divided and each family member shown his or her portion. This was done before the deceased died. The deceased brother to the applicant sold his portion before the deceased died. The deceased brother of the applicant was entitled to a portion of his father's land. If he decided to sell his portion, the applicant should not interfere with the same. Let the applicant have the grant confirmed and distribute the rest of the land to the other beneficiaries. The family of Peter Magaya John is not disputing the sale to the respondent. I do not see how the applicant will succeed in nullifying the agreement between the respondent and the late Peter Magaya John who left a surviving widow who is supporting the sale and who is entitled to the land due to her late husband. I find that the applicant has failed to show that he has a prima facie case with probability of success. I do not also see what irreparable injury he will suffer if the injunction is not granted.
- It is so ordered.

**E. OBAGA.**

In the presence of M/s. Arunga for applicant.

**E. OBAGA.**

**28/1/2015.**