



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 63 OF 2015

MARTHA WAIRIMU KIGAMBA1ST PLAINTIFF

RAHAB WAMBOI NJUGUNA2ND PLAINTIFF

DOUGLAS KAHATO GIKOMYO 3RD PLAINTIFF

VERSUS

LUCY WANJIRU KISEMBA 1ST DEFENDANT

SAMY MORAYA KIGAMBA 2ND DEFENDANT

R U L I N G

1. The applicants are registered owners of **L.R. Nos. Trans-Nzoia/ Cherangani/1267, 1268 and 1271** respectively (suit lands). The suit lands are subdivision of **L.R. No. Trans-Nzoia/Cherangani/135** which was owned by **Daniel Kigamba Kahato** who died on **13/12/2014** (deceased). The deceased was a brother to the first applicant **Martha Wairimu Kigamba**, **Joseph Njenga** husband to the second applicant **Rahab Wamboi Njuguna** and **Jane Wanjiru** mother of the third applicant **Douglas Kahato Gikomyo**.
2. During the lifetime of the deceased, the deceased subdivided his land amongst his two wives and children and also gave portions thereof to his brother **Joseph Njenga** and sisters **Martha Wairimu Kigamba** and **Jane Wanjiru**. The process of subdivision was completed and the subdivisions were duly registered following consent to subdivide the land into 8 portions of various acreages. It was agreed that the portion given to Joseph Njenga was to be registered in the name of his wife Rahab Wamboi Njuguna, the second applicant herein. It was also agreed that the portion given to Jane Wanjiru was to be registered to the name of her son Douglas Kahato Gikonyo, the third applicant herein.
3. As the subdivisions had been registered and necessary consents and transfer signed during the lifetime of the deceased, the applicants moved and obtained titles in their names soon after the demise of the deceased. All the applicants obtained their titles on 30/3/2015. Prior to the applicants obtaining their titles, the first and second respondents who are children of the deceased from his first wife moved into the lands occupied by the applicants and chased them away. This was just a few days after the demise of the deceased. This is what prompted the applicants to move to court to file an application for injunction restraining the defendants/respondents from interfering with their respective properties.
4. The applicants contend that the suit lands were given out by the deceased during his lifetime and that the respondents have no business interfering with the same. The applicants further contend

that the deceased subdivided his land after obtaining consent to do so. Mutation forms were prepared and subdivisions registered. They merely went to process titles after the demise of the deceased.

5. The applicants' application is opposed by the respondents through a replying affidavit sworn on 16/5/2015. The respondents contend that the applicants were not dependants of the deceased and that any claim by the applicants should have been pursued through the process of succession. The respondents contend that the applicants obtained titles in a fraudulent way and that the documents in support of the applicants' application are forgeries tailored to suit their case. The respondents further contend that the deceased was manipulated into signing the documents as he was bedridden at the time due to sickness.
6. I have carefully considered the applicants application as well as the supporting affidavits and accompanying documents. I have also considered the response by the respondents. The principles for grant of interlocutory injunction are now well settled. First an applicant must demonstrate that he has a prima facie case with probability of success. Second, an injunction will not normally be granted unless the applicant might otherwise suffer loss which will not be compensated in damages. Third, if the court is in doubt it will decide the application on a balance of convenience.
7. In the present case, the applicants have demonstrated that the deceased started the process of subdividing his land in the year 2006. This is as per minutes annexed to the applicants supporting affidavit. In those minutes, he gave his sisters Martha Wairimu and Jane Wanjiku and his brother Joseph Njenga 1 ½ acres each. There was another meeting on 5/10/2014 which reiterated the verdict reached by the deceased in the previous meetings including one held on 12/10/2013. The minutes of these meetings have been annexed to the supporting affidavit of the applicants. Consent of the land control board was applied for and obtained on 12/3/2014. The applicants also annexed a mutation form showing the subdivisions.
8. The deceased's first wife had sued the deceased in **Kitale HCCC No. 112 of 2007**. A consent was recorded in that suit giving the deceased's first wife 8 ½ acres. This consent was taken into account in the subsequent subdivision. A surveyor was even invited to come and subdivide the deceased's land into portions as per the consent of the land control board. After the subdivisions were registered, the only thing remaining was for each individual to process their titles. The applicants did this and obtained their titles.
9. The fact that the titles were obtained after the demise of the deceased is not an indication of fraud. The deceased had completed the process of giving out his land during his lifetime. The applicants merely went to get titles. The portions in respect of which the applicants obtained titles cannot form part of the property of the estate of the deceased. The deceased had given out these portions as gifts inter vivos and the same are not available for distribution of his estate. I find that the applicants have demonstrated that they have a prima facie case with probabilities of success. I allow the applicants' application dated 4/5/2015 in terms of **prayer 3 and 4**.

It is so ordered.

Dated, signed and dated at Kitale on this 25th day of June, 2015.

E. OBAGA

JUDGE

In the presence of Mr. Teti for Applicants and Mr. Onyancha for Respondents.

Court clerk – Isabellah.

E. OBAGA

JUDGE

25/6/2015