



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 91 OF 2014**

**MARGARET MUTHONI WAICHERE :::::::::::::::::::: PLAINTIFF**

**VERSUS**

**JOHN KARANJA WAICHERE :::::::::::::::::::: DEFENDANT**

**RULING**

1. The applicant is a sister to the respondent herein. On 26/5/2014 the applicant filed a notice of motion in which she seeks orders of injunction restraining the respondent from dealing in any manner with LR No. Saboti/Kiboroa Block 1/Gitwamba/271 (Suit land). The respondent who was duly served for inter-partes hearing neither filed any grounds of opposition nor replying affidavit in opposition to the motion. The motion therefore proceeded ex-parte.
2. The applicant contends that the suit land belonged to her late father Kamau Chege. That the respondent went ahead and carried out Succession Cause in respect of the estate of their father without the consent of other family members and had the entire suit land transferred into his name.
3. The applicant contends that the applicant's intentions are malicious and are meant to disinherit the other family members where she is one of the beneficiaries and evict her from the suit land. It is on this basis that she is seeking an injunction restraining the respondent from dealing with the suit land.
4. The principles for grant of temporary injunction are now well settled. First an applicant must demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be issued unless the applicant might otherwise suffer irreparable injury which may not be compensated in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.
5. The issue for determination herein is whether the applicant has demonstrated that she is entitled to the injunction sought. The applicant contends that the respondent had himself registered as owner of land following succession. There is nothing on record to show that the suit land was registered as a result of succession. If this were to be the case the applicant should have produced an extract of the title (green card) to show whether the suit land was registered in the name of the respondent by way of transmission. The applicant only annexed a copy of an official search which shows that the respondent was registered as owner of the suit land on 13/12/2011.
6. Though the applicant has averred that Kamau Chege was her father, a look at a letter from the Senior Assistant Chief of Kiboroa sub- location shows that Kamau Chege (the deceased) had no children and that he was a brother of Paul Waichere Chege who is the father of both the applicant and respondent. I am aware that in most African societies, an uncle is normally referred to as "father". This being the case it is not clear on how the applicant is laying a stake on the land of her uncle. If the applicant felt disinherited, then she should have raised that in the Succession cause which would have then settled the matter as the law provides on who is to inherit the estate of one who has no children but has known relatives. Since the applicant has not annexed any document to show that there was any succession as she alleges, I do not think that she has demonstrated that she has a prima facie case with probability of success. In any case she will not suffer irreparable injury which will not be compensated in damages. Already she has lodged a caution against the title held by the respondent. She is again free to pursue her interests in the

succession cause if any was ever filed.

7. For the above reasons I find that the applicant's application is not well founded. The same is hereby dismissed with no order as to costs.

It is so ordered.

Dated, signed and delivered at Kitale on this 17th September, 2014.

**E. OBAGA**

**JUDGE**

**COURT**: Ruling delivered at 10.25 a.m. in the absence of the applicant who was aware of today's date. Court Clerk – Kassachoon.

**E. OBAGA**

**JUDGE**

**17/9/2014**