

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA ATY KITALE.

LAND CASE NO. 96 OF 2014.

MARGARET CHESANG KERICH ::::::::::::::::::::::::::::::::::::::: PLAINTIFF.

VERSUS

ZIPHORA H. CHEPKURUI BARMAMEL ::::::::::::::::::::::::::::::::::::::: DEFENDANT.

R U L I N G.

1. The applicant is a daughter in-law of the respondent. The husband of the applicant has since died. The applicant is the administrator of the estate of her late husband. The applicant's father in-law has also died and the respondent is the administrator of his estate. The respondent filed a notice of motion dated 6/6/2014 in which she seeks an injunction against the respondent restraining her and her agents from selling 20 acres comprised in title No. LR. 5341 east of Kitale Town. The applicant also seeks an injunction against the respondent restraining her and her agents from in any way dealing with land known as Fort Tenant plot No. 7 measuring 2.5 acres.

2. The applicant contends that the respondent was given 54.6 hectares out of her late husband's LR. No. 5341 in addition to 2.5 acres at Fort Tenan. The respondent was to hold the said parcels for the benefit of her children. The husband of the respondent had four wives. He had several properties and each of his four widows got an equal share of each property during distribution of his estate. The applicant contends that the respondent had four daughters and two sons one of whom was her deceased husband. She contends that she is entitled to 20 acres out of LR. No. 5341. She further contends that the respondent has been selling the share given to her and that she has now started selling part of the 20 acres to which she is entitled to. She contends that if the respondent is not restrained from selling the land, she will be rendered destitute as her entitlement will be sold by the respondent. The applicant also contends that she is entitled to a share of the 2.5 acres at Fort Tenan plot in Kericho and that the respondent should be restrained from selling the same.

3. The respondent opposed the applicant's application based on a replying affidavit sworn on 28/7/2014 and filed in court on 30/7/2014. The respondent contends that the applicant cohabited with her son between 1989 and 199..... before the two parted ways after they got a son. That the respondent's son and his other siblings were each given 10 acres but that the applicant's husband sold his entire share as well as other 30 acres and 125 acres at Narok. That the respondent's son squandered the money together with the applicant. As at the time the respondent's son died, the applicant was not with him. The respondent contends that she is the one who called the applicant and built for her a homestead for the sake of her grandson. That the portion given to the applicant belongs to the respondent as the applicant's husband had already sold his entitlement. The respondent therefore contends that there is no land which the applicant can claim from her.

4. I have carefully considered the applicant's application as well as the opposition to the same by the respondent. The principles for grant of injunction are now well settled.

Firstly, an applicant must demonstrate that he has a prima facie case with probability of success. Secondly, an injunction will not normally be granted unless otherwise the applicant will suffer irreparable loss. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.

5. I have looked at the certificate of confirmation in respect of the estate of the husband of the respondent. As I had said earlier on in this ruling, the respondent's husband had four wives. A look at the copy of the certificate of confirmation of grant shows that each of the four widows except one got 54.6

hectares. The fourth one got 56.2 hectares out of LR. 53141., Each of the four widows also got 25 acres each out of LR. 5341. I do not understand if LR. No. 53141 and LR. 5341 are two separate plots or if it was a typing error. Be that as it may, the same certificate of confirmation shows that it is the remainder of LR. 5341 which was 480 acres which was to be shared amongst the four widows. In the same certificate of confirmation of grant, there is a portion of 100 acres out of LR. 5341 which was shared equally with each widow taking 25 acres each. It is not clear what was the acreage of LR. 5341 which was being shared. A look at the portions given to each widow and the acreages being shared out do not add up. It is therefore difficult to figure out the basis upon which the applicant is seeking 20 acres out of LR. 5341.

The Fort Tenant plot was 10 acres. Each of the four widows got 2.5 acres each. It is apparent that the four widows have not processed their individual titles following succession. This is because the copy of title annexed to the applicant's application in respect of LR. 5341 is still in the name of the husband of the four widows.

6. The respondent has annexed a number of sale agreements between the husband of the applicant and other third parties. In aggregate, the applicant's husband had sold about 40 acres out of LR. 5341. It therefore follows that the applicant's claim to 20 acres is not tenable as already her husband had sold his entire entitlement as well as other portions belonging to the respondent. The respondent deponed that the applicant's husband had also sold 125 acres in Narok. This could be true because the applicant is not seeking any share on that portion. This could be due to the fact that the applicant is aware that her husband sold the 125 acres in Narok which was the respondent's share which was to benefit all her children. In view of this, I do not find that the applicant has demonstrated that she has a prima facie case with probability of success. Besides the applicant failing to demonstrate that she has a prima facie case, grant of an injunction will cause a lot of inconvenience to the four families who have not obtained individual titles in respect of LR. 5341 and the Fort Tenant plot at Kericho.

7. The respondent is willing to give the applicant 2 acres elsewhere. This is out of humanitarian grounds. The applicant will therefore not be destitute as she claims. It is her husband who sold all their entitlement. I therefore find that this application lacks merits. The same is hereby dismissed with no order as to costs.

It is so ordered.

[Dated, signed and delivered at Kitale on this 10th day of December, 2014.]

E. O OBAGA.

JUDGE.