



REPUBLIC OF KENYA



KENYA LAW
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Chesang (Suing as the personal representative of the Estate of Chesang Suter - Deceased) v Chesang (Environment & Land Case E041 of 2024) [2025] KEELC 647 (KLR) (19 February 2025) (Ruling)

Neutral citation: [2025] KEELC 647 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE E041 OF 2024
CK NZILI, J
FEBRUARY 19, 2025

BETWEEN

SOLOMON KIPLAGAT CHESANG (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF CHESANG SUTER - DECEASED) PLAINTIFF

AND

MAGDALENA JEPCHUMBA CHESANG DEFENDANT

RULING

1. By an application dated 17/12/2024, the court is asked to restrain the defendant from disposing, charging, leasing, or in any way giving away possession of parcel LR No. Trans Nzoia/Suwerwa/1316, pending the hearing and determination of this suit. In the alternative, the applicant seeks an order to maintain the prevailing status quo regarding the occupation, user, and undivided status of the land and the OCS Cherangany Police Station to assist in the enforcement of the court orders.
2. The application is based on the reasons on its face and a supporting affidavit of Solomon Kiplagat Chesang dated 16/12/2024. The applicant avers that he is the legal representative of the estate of his late father as per the Grant attached as SKC'1' and who is the registered owner of parcel LR No. Trans Nzoia/Suwerwa/156 comprising 24 Hectares, as per a copy of Green Card attached as SKC'2'.
3. The applicant depones that he obtained a decree in Kitale SPMCC No. 38 of 2004, which did not mention the transfer of the land to the beneficiaries save to occupy and work on the land. Further, the applicant avers that there was also a ruling in Kitale High Court Misc. Appl. No. 31 of 2005, attached as SKC'4', which held that the Land Disputes Tribunal (LDT) had jurisdiction to make orders on occupation and use of the land but not over transfer and issuance of title.
4. In a ruling dated 10/8/2018, the court at Kitale reviewed the orders of 21/3/2016 and authorized the Executive Officer(E.O) to sign transfer documents to facilitate the subdivision of parcel LR No. 156,



yet the deceased owner had passed on on 1/8/2012, which the respondents were aware of as per a death certificate attached as SKC'6'. The applicant depones that a mutation form was prepared and signed by the E.O. of the court and four subdivision numbers of the parcel created as No. 1313 - 1316, as per search certificate marked SKC-'7,8,9 and 10'. The applicant deposes that whereas parcel Nos. 1313-1315 are still registered in the names of the deceased; parcel LR No. 1316 was in the name of the respondent.

5. Further, the applicant depones that in Kitale ELC No.40 of 2017, a judgment was delivered on 24/6/2021, where the plaintiff's claim was allowed and the defendant's counterclaim struck out on the basis that the defendant had no Grant for the estate of Chesang Suter, as per attached copy marked SKC'11'. The applicant avers that the respondent has not been residing on the land but on parcel LR No. Moiben/Chebara/82, belonging to Suter Chesumet, as per a copy of the official search marked SKC'12'.
6. The applicant depones that the defendant is busy trying to enforce the subdivision of the land into four portions on an order already reviewed or set aside in Kitale CMC LC No. 38 of 2004, going by a letter dated 16/12/2024 attached as SKC'13', from the area chief showing a land surveyor is to visit the land to re-establish the ground boundaries. The applicant urges the court to issue the orders sought to preserve the land as the defendant may be selling the land to run away from the problem she has created. Subsequently, the applicant depones that he has reliable information that Salome Suter and Isaiah Silamoi are purchasing 15 acres and 1 acre from the defendant and are awaiting the boundaries to be fixed on the ground and given the subdivisions of parcels LR Nos. 1313-1316, there is a real danger of the property being disposed of.
7. Whereas the application was served upon the respondent, there is no reply filed in compliance with the directives issued on 17/12/2024. A party seeking a temporary injunction pending hearing and determination of a suit has to establish a prima facie case, show that he will suffer irreparable loss and damage, and lastly; that the balance of convenience tilts in favor of granting the orders sought.
8. A prima facie case refers to a genuine and arguable case. It is a case which on the material presented to the court, it will conclude there exists a right which has been infringed by the opposite party as to call for an explanation or rebuttal from the latter. See *Mrao Ltd -vs- First American Bank of Kenya* [2003] KLR 125. Irreparable loss is a loss that cannot be quantified in monetary terms.
9. A balance of convenience is where the inconvenience of not granting the injunction and the suit ultimately is allowed to the plaintiff would be more than to the defendant, when the injunction is granted and the suit ultimately dismissed. See *Paul Gitonga Wanjau -vs.- Gathuthi Tea Factory Co. Ltd & Others* [2016] eKLR.
10. In *Nguruman vs. Jan Bonde Nielsen & Others* [2014] eKLR, the court said that the three pillars that set the jurisdiction of an interlocutory injunction rule are to be applied separately, distinctly, and logically.
11. In *Kenya Commercial Finance Co. Ltd -vs- Afraha Education Society Ltd* [2001] Vol 1EA 89, the court took the view that if the applicant establishes a prima facie case, that alone is not a sufficient basis to grant the interlocutory injunction without satisfying that the injury to be suffered will be irreparable. The court said that in doing so, it does not require a mini-trial or examination of the merits of the case and that all a court should do is to see whether, on the face of it, the person applying for an injunction has a right which has been threatened with violation. Further, the court said that an applicant need not establish title to the land and that it is enough if he can show that he has a fair and bonafide question to raise the existence of the right which he alleges, on a balance of probabilities.



12. The claim by the plaintiff is captured in the plaint dated 19/11/2024, where she alleges that she is the legal representative of the estate of the late husband, Chesang Suter, who was the owner of the parcel LR No. Trans Nzoia/Suwerwa/156. She pleaded that parcel LR No. 1316 was irregularly subdivided into four portions No. 1313-1316, out of which the latter was registered in the name of the defendant. The plaintiff terms the acts as tantamount to intermeddling with the deceased estate. She however admits that the defendant is a co-wife with rights only to occupy and use but not to transfer or subdivide it to third parties.
13. The plaintiff seeks to invalidate the subdivision and transfers as fraudulent in view of previous court decrees to that effect. On the other hand, the defendant's defense is dated 16/12/2024. She pleads the doctrine of res judicata in view of Kitale ELC No. 40 of 2017, and the award in Kitale CMCC No. 38 of 2004. In paragraph 6, of the defence, the defendant confirms that the County Surveyor, vide a letter dated 13/3/2024, was to visit the ground to re-establish boundaries, since her title deed was in line with court decrees or orders, hence lawfully acquired as per the will of her deceased husband.
14. From the pleadings, it is evident that the plaintiff has a right to the suit land. Equally, the defendant has a noticeable interest in using and occupying the land. What is disputed is whether the subdivision of the initial parcel LR No. Trans Nzoia/Suwerwa/156 was lawful, regular, and legal. The defendant takes the view that parcel No. Trans Nzoia/Suwerwa/1316 is validly owned. The intention to subdivide and undertake further dealings on the land is confirmed by the letter from the land surveyor dated 13/3/2024.
15. In granting or not granting an injunction, the court must look not just at their fear or apprehension on the part of the applicant. The threat to violate the right must be genuine and apparent. See John Nduva Wambua & Another -vs- Kioko Makaya [2019] eKLR.
16. The subdivision and or transfer of the land to third parties is likely to interfere with the substratum of the suit. I find the same would amount to irreparable loss or damage to the applicant's right to the land, if any, was to be upheld at the hearing. Where doubt exists as to the applicant's right or if the right is not disputed but its violation is denied, the court, in determining whether to grant a temporary injunction, will seek to maintain the status quo, where the balance of convenience lies as held in Paul Gitonga Wanjau -vs- Gathuthis Tea Factory Co. Ltd & Others (Supra).
17. Further, in Amir Suleiman -vs- Amboseli Resort Ltd [2004] eKLR, the court held that it should always opt for the lower than the higher risk of injunctive. Looking at the material presented before me, the justice of the matter calls for an order to preserve the status of the land as of the filing of the suit. There shall be maintenance of the status quo with no transfers, subdivisions, leasing, letting, charging, boundary fixing and or sale pending hearing and determination of the suit.
18. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 19TH DAY OF FEBRUARY 2025.

In the presence of:

Court Assistant - Chemutai

Cheptarus for the Defendant present

Ndarwa for Kiarie for Plaintiff/Applicant present

HON. C.K. NZILI

JUDGE, ELC KITALE.

