



**Kangogo (Suing as the Legal Representative of the Estate of the Late Milka Taptuwei Tibot) & another v Tibot & 2 others (Environment & Land Case E040 of 2022) [2023] KEELC 857 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 857 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E040 OF 2022  
EO OBAGA, J  
FEBRUARY 16, 2023**

**BETWEEN**

**ZIPPORAH JERONO KANGOGO (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE MILKA TAPTUWEI TIBOT) ..... 1<sup>ST</sup> PLAINTIFF**

**ZIPPORAH JERONO KANGOGO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**WILSON KOMEN TIBOT ..... 1<sup>ST</sup> DEFENDANT**

**MICHAEL KIBOT TIBOT ..... 2<sup>ND</sup> DEFENDANT**

**JOSEPH YEGO TOBOT ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This is a ruling in respect of a notice of motion dated July 21, 2022 in which the plaintiff/applicant seeks the following orders:-
  - a. Spent
  - b. Spent
  - c. The court be pleased to issue orders of temporary injunction restraining the Defendants by themselves, their servants, agents, employees, representatives and/or anyone acting at their behest direction and/or instructions, from cultivating on, selling, transferring, charging, hiving off, developing or in any way interfering with the Plaintiff's occupation and/or use and cultivation of the total land formerly known as Uasin Gishu/Elgeyo Border Scheme/258 and now known as Uasin Gishu/Elgeyo Border Scheme/519, Uasin Gishu/elgeyo Border Scheme/520 and Uasin Gishu /Elgeyo Border/521 measuring 15 acres pending hearing and determination of the main suit.



- d. A declaration that they Plaintiff /Applicant is entitled to cultivate on and occupy share of the land formerly known as Uasin Gishu/Elgeyo Border Scheme/258 and now known as Uasin Gishu/Elgeyo Border Scheme/519, Uasin Gishu/Elgeyo Border Scheme/520 and Uasin Gishu /Elgeyo Border/521, which the 1<sup>st</sup> Defendant/Respondent holds as an ancestral/family land, in trust for the Plaintiff's; and that the Defendants should not charge, sell, transfer or alienate the same, to the detriment of the Plaintiff.
- e. Costs of this application be provided for.
2. The applicant is a daughter to the 1<sup>st</sup> defendant/respondent and a step sister to the 2<sup>nd</sup> and 3<sup>rd</sup> defendants/respondents. The applicant states that she is the only surviving child of the 1<sup>st</sup> wife of the 1<sup>st</sup> defendant, her only brother having died in 1978. The applicant came from the first house. Her father had two other wives.
  3. The applicant states that LR No Uasin Gishu/Elgeyo Border Scheme/258 (suit property) was purchased by her father in 1963. Her mother Milka Taptuwei Tibot lived on the suit property with her father. Her mother used to work to assist her father repay the loan he had taken to purchase the suit property. When her mother became ill, she was taken to the home of the third wife of her father where she died and was buried there.
  4. The applicant states that she is entitled to a share of her mother's entitlement and that as she is daughter to the 1<sup>st</sup> respondent, she is entitled to a share of the suit property. The applicant states that she is married and that recently, she discovered that the suit property had been subdivided into three portions which were then shared between her father and two step brothers. It is on this basis that she is praying for orders as shown in paragraph one hereinabove.
  5. The respondents have opposed the applicant's application through three separate affidavits all sworn on September 2, 2022. The Respondents contend that the applicant's application is misconceived as she cannot seek a share of a property belonging to her father who is still alive and that what she is trying to do amounts to division of matrimonial property yet she is not a spouse of the 1<sup>st</sup> respondent.
  6. The respondents further state that the prayers which the applicant is seeking are declaratory in nature and are not prayed for in the main suit and cannot therefore be granted. They state that in any case, the applicant has no locus standi to bring this suit and that her father was at liberty to distribute his property which he bought and is not ancestral land.
  7. In a further affidavit sworn on September 22, 2022, the applicant states that she has locus standi to bring the suit as she had taken out limited grant of letters of administration in respect of the estate of her late mother and that she enjoys a close relationship with her father as confirmed in a recent photograph which they took together.
  8. The parties were directed to file written submissions. The applicant filed her submissions on December 6, 2022. The respondents filed their submissions on December 6, 2022 as well. I have carefully considered the applicant's application as well as the opposition thereto by the Respondents. I have also considered the submissions by the parties. The only issue for determination is whether the applicant has met the threshold for grant of an injunction and if any declaratory orders can be given at interlocutory stage.
  9. The principles for grant of temporary injunction were well set out in the case of *Giella –vs- Classman Brown & Co. Ltd* (1973) EA 358 where it was stated that firstly an Applicant must have a prima facie case with probability of success. Secondly, an injunction will not be granted unless it is shown that



The Applicant will suffer injury which will not be adequately compensated in damages. Thirdly, if the court is in doubt, it will decide the application on a balance of convenience.

10. In the case of *Mrao – Vs- First American Bank of Kenya Limited & 2 others* (2003) KLR125, a prima facie case was described as follows:-

“ A prima facie case in Civil application includes but is not confined to a genuine and arguable case. It is a case which on the material presented to the court, a tribunal properly directing itself will conclude there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

11. In the instant case, the applicant is seeking to injunct the respondents from in any manner dealing with the suit property including cultivation. She is also seeking a declaration that she is entitled to cultivate the same. On whether the applicant has established a prima facie case, it is important to note that her father is alive and has already subdivided the suit property amongst his sons a portion of which he has left for himself. The applicant does not reside on the land. Since her claim is on customary trust, I do not see what prima facie case she has to warrant issuance of an injunction.
12. On the issue of irreparable injury, the applicant has not demonstrated which injury she will suffer which will not be compensated in damages. The applicant for decades has not resided on the suit property. There is no threat that either her father or her step brothers are intent on disposing the suit property. There is therefore no injury which she will suffer which will not be compensated in damages.
13. On the issue of balance of convenience, it is the Respondents who are in possession and therefore the balance of convenience tilts in their favour. If the court were to grant the injunction in the manner sought, it will be tantamount to evicting them from the land and that is not the purpose of an interlocutory injunction.
14. On the applicant’s claim for a declaration that she is entitled to cultivate the land, this is not a relief in her claim and in any case, this is not a relief which can be granted at an interlocutory stage. Her rights have to be determined in a full hearing if any such relief was to be considered.

It is therefore clear that the applicants application is devoid of merit. The same is dismissed with costs to the respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2023.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

Mr. Omboto for Defendants/Respondents.

Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

