



REPUBLIC OF KENYA



**Jefwa v Iha & 26 others (Environment & Land Case 55 of 2018)
[2023] KEELC 16512 (KLR) (24 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16512 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 55 OF 2018**

**MAO ODENY, J
MARCH 24, 2023**

BETWEEN

BETTY JUMWA JEFWA PLAINTIFF

AND

KATANA IHA & 26 OTHERS DEFENDANT

JUDGMENT

1. By an amended plaint dated 29th March 2019 the Plaintiff herein sued the defendants seeking the following orders; -
 - a) A declaration the plaintiff and her son Ugo Pellegrini are the legal owners two thirds of plot No. 129 Mambui.
 - b) The subdivision of Plot No. 129 Mambui with two thirds of it be registered in the plaintiff's name and one third in the defendants' names with costs to both parties.
 - c) Costs of this suit.
2. The Plaintiff's case is that together with her son Ugo Pellegrini they are the beneficial owners of the estate of the late Luigi Pellegrini and the owners of two thirds of plot No. 129 Mambui while the Defendants own a third of the said plot.
3. It is the Plaintiff's case that the suit plot has never been subdivided to give exclusive and distinct proprietary rights to the rightful owners and both the Plaintiff and Defendants have been living as owners in common on the suit plot and it is in best interest of all parties to subdivide the property.
4. The Defendants were served with Summons to enter appearance but failed to either enter appearance or file a defence. The matter proceeded by way of formal proof.



5. PW1 Betty Jumwa Jefwa adopted her witness statement dated 22nd September 2021 and produced as PEX 1-3 documents as per the list of documents dated 12th September 2019.
6. PW1 stated she sold 15 acres to the Defendants who already owned 30 acres thus making a total of 45 acres while hers are 65 acres hence the plot should be subdivided for each party to have their distinct portions and each party to bear the cost of subdivision.
7. Counsel for the Plaintiff submitted that the certificate of title indicates the parties' respective shares in the suit property and hence the subdivision should be done to reflect the portions.
8. Mr. Mwadilo relied on the case of *Kiprono Arap Koske v John Cheruiyot Koske* [2016] eKLR where the court issued an order for the subdivision of the suit property into two equal portions for registration in the name of the Plaintiff and Defendant respectively where both parties were registered as owners in common.

Analysis and Determination.

9. The Defendants were served with summons to enter appearance but neither entered appearance nor filed a defence within the stipulated period. This matter therefore proceeded undefended.
10. The issue for determination is whether the Plaintiff's prayer for an order for subdivision of the suit land has merit. It should be noted that the Plaintiff's prayer for subdivision is to benefit both parties.
11. The Plaintiff's case is that each party have their portions which is not disputed and that all the parties were desirous of the subdivision of their portion to enable each party get their titles.
12. From the evidence and the documents produced on record show that there is no ownership dispute and at one point an MCA for the area attempted to fundraise to help the Defendants with the subdivision but the same did not materialize.
13. The Plaintiff has tendered evidence to the effect that the Defendants own 45 acres of the suit property while her and her son own the rest of 65 acres. This is corroborated by the Certificate of Title produced by the Plaintiff and as such I find that the Plaintiff has proved her case on a balance of probabilities.
14. I therefore make the following specific orders;
 - a) A declaration is hereby made that the plaintiff and her son Ugo Pellegrini are the legal owners two thirds of plot No. 129 Mambrui.
 - b) The subdivision of Plot No. 129 Mambrui with two thirds of it be registered in the plaintiff's name and one third in the defendants' names with both bearing the costs of subdivision.
 - c) Defendants to pay costs of this suit.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 24TH DAY OF MARCH, 2023.

M.A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the [Civil Procedure Rules](#).

