

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

SUCCESSION CAUSE NO. 1 OF 2019

IN THE MATTER OF THE ESTATE OF THE LATE KIPKIRUI ARAP NDAMUR (DECEASED)

JOSEPH KIPKOSKE A. KIRUI.....PETITIONER

J U D G M E N T

1. The Petitioner **JOSEPH KIPKOSKE A. KIRUI** filed an Application dated 22/9/2020 seeking to compel the objector **ELIZABETH KIRUI** to sign transfer documents for the subdivision and transfer of LR. **No.KERICHO/KAPKATET/555 (hereafter referred to as the suit property)** in order to effect summons for confirmation issued on 17/9/2020.
2. The Objector herein **ELIZABETH KIRUI** protested against the summons for confirmation filed by the Petitioner **JOSEPH KIPKOSKE A. KIRUI** on the basis that the Petitioner sold to her one Acre from his portion and therefore she should be given 5 Acres and the Petitioner 3 Acres. The Petitioner filed an Application dated 22nd September, 2020 to compel the Objector to sign transfer documents.
3. The Objector called seven witnesses who said the Petitioner sold one Acre from his Land to the Objector for Kshs.9,000/= and he bought another Shamba with the proceeds. **JOSEPH CHEPKWONY** who is the son of the objector said he sold a cow and gave the Petitioner the money and the Petitioner bought another Shamba at Kea.
4. The Petitioner who called six witnesses denied that he sold one Acre of his land to the objector and he said that he could not sell property belonging to his deceased father.
5. However, there is evidence that the petitioner sold one Acre of his Land to the Objector for **Kshs.9,000/=** and that the Objector sold a Cow to pay the Petitioner.
6. There is also evidence that the Petitioner admitted that he sold his one Acre to the Objector and the Surveyor curved the one Acre during subdivision but the Petitioner later reneged the admission and claimed he had no capacity to sell his deceased father's property.
7. I find that the Petitioner admitted that he sold an Acre of his share to the Objector. I also find that the Objector called witnesses who witnessed the transaction.
8. The Petitioner having admitted the sale later changed his mind after the subdivision. Although the law provides that a beneficiary cannot sell Land before confirmation of grant, the Petitioner who is the Administrator of the Estate of the Deceased cannot be allowed to benefit from his wrong doing.
9. The Petitioner having admitted selling one Acre of his share to the Objector is estopped from denying the transaction.
10. I accordingly uphold the subdivision by **OW.4 PATRICK MUTAI** the Government Land Surveyor. The one Acre curved off from the Petitioner's property to be allocated to the Objector.
11. The Certificate of Confirmation to be amended to reflect that one Acre from the Petitioner's share to be allocated to the Objector.
12. The Application dated 22/9/2020 be and is hereby dismissed with no orders as to costs.

Delivered, signed and dated at Kericho this 16th day of April, 2021.

A. N. ONGERI

JUDGE