



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**ELC CASE NO. 255 OF 2014**

**JOHN MUNYI NJERU.....PLAINTIFF**

**VERSUS**

**OBADIA NYAGA MURUNGU**

**EVANS WARIRU**

**BERNARD NJERU NYAGA**

**(OFFICIALS OF IKANDI CLAN).....DEFENDANT**

**JUDGMENT**

The plaintiff herein filed this suit on 31<sup>st</sup> December 2014 seeking the following orders against the defendants who are sued as officials of the IKANDI CLAN:-

- a. Declaration that the plaintiff is entitled to allocation of a portion of land from block No. 2408 as his entitlement as a member of IKANDI Clan and the defendants be ordered to give him a portion of three (3) acres.*
- b. Costs of the suit and interest.*
- c. Any other relief this Honourable Court may deem fit to grant.*

The plaintiff's claim is premised upon the pleadings that being a member of the Ikandi Clan, he is entitled to benefit from the land held by the said clan in trust for its members and for which he was paying fees or charges as prescribed by the clan members. The defendants have however without justifiable course denied him a portion in block No. 2408 measuring three (3) acres hence this suit.

In their joint statement of defence, the defendants who are the Chairman, Treasurer and Secretary respectively of the said clan pleaded that indeed the parcel No. MBEERE/MBITA/2408 measuring 24 Ha about sixty (60) acres was given to the Ikandi clan after it won a case against KIARAGO GICHIMBI and the members were given a minimum of 0.4 Ha each depending on each member's contributions. The plaintiff requested that his share be sub-divided upon his uncles (during oral testimony it turned out that they were the plaintiff's grandchildren) as follows:-

- a. Parcel No. MBEERE/MBITA/4470 0.60 HA – S M N (minor).**

**b. Parcel No. MBEERE/MBITA/4471 – 0.40 HA – E M N (minor).**

The plaintiff called one witness NJERU GAKUIYA (PW2) while the 1<sup>st</sup> defendant testified on behalf of the other defendants.

The plaintiff confirmed that the defendants were the Chairman, Secretary and Treasurer of the Ikandi clan while he was the vice-Chairman. He asked the Court to rely on his statement which basically was to the effect that the Ikandi clan of which he was a member had a land dispute with other clans which the Ikandi clan won and he was therefore entitled to three (3) acres in land parcel No. 2408 which he was occupying but instead, the defendants shared out the land to other members without giving him his share.

The plaintiff's witness NJERU GAKUIYA (PW2) also asked the Court to adopt his statement in which he stated that the plaintiff was a member of the Ikandi clan and he witnessed him (plaintiff) pay Ksh. 5,500/= for his share of three (3) acres of land which the defendants however allocated to other persons without justifiable reason.

On his part, the 1<sup>st</sup> defendant confirmed that he was the Chairman of the Ikandi clan while the other defendants were also officials including the plaintiff who was his vice-Chair. He too confirmed that their clan won the land dispute involving title No. MBEERE/MBITA/2408 which was to be shared among the clan members but the plaintiff gave his share to his daughter's children namely E M N and S M N who were therefore allocated parcel No. 4470 and 4471. Thereafter, the plaintiff claimed that he had not been given his share and reported to the Chief. The 1<sup>st</sup> defendant produced the certificates of search showing that indeed parcels number MBEERE/MBITA/4470 and 4471 are registered in the names of S M N (minor) and E M N (minor) - see defence Exhibit 5. He also produced a list of Ikandi clan members showing their respective shares of the land – see defence Exhibit 4. The list also bears the names of S M N and E M N showing their respective shares and also describing them as minors.

There is no doubt that all the parties herein were officials of the Ikandi clan which won a dispute involving land parcel No. MBEERE/MBITA/2408 and which was to be shared among the clan members as per their contributions. The plaintiff did produce as exhibit receipts that he paid Ksh. 5,500/= as a clan member and which entitled him to a share of the land – see plaintiff's Exhibit No. 2. The issue here is whether the defendants shortchanged the plaintiff and denied him his share or whether infact he gave his share to his grandchildren E and S.

The plaintiff, it is conceded, was himself an official of the Ikandi clan and indeed he was the vice-Chair and therefore deputized his chair who is the 1<sup>st</sup> defendant. Given his position, I find it highly inconceivable that the defendants would have allocated the other clan members their share of the land leaving out the plaintiff who was himself one of the officials. The plaintiff has not offered any explanation why his co-officials would so brazenly treat him in such a manner. That claim must be taken with a pinch of salt.

Secondly, and most importantly, the defendants claim that infact the plaintiff gave his share to his grandchildren E and S. Certificates of search have been produced before this Court showing that infact E M N (minor) is the registered proprietor of parcel No. MBEERE/MBITA/4471 while S M N is the registered proprietor of parcel No. MBEERE/MBITA/4470. There was no reply to the defence by the plaintiff in which he denied any relationship with the said E and S and neither was this rebutted in his oral testimony. This Court is therefore satisfied that indeed the plaintiff was allocated his share of land out of parcel No. MBEERE/MBITA/2408 which he surrendered to his grandchildren. Those children's names appear on the list of beneficiaries produced by the defendants and the plaintiff, as an official of the clan, must have been privy to the same. He did not deny the authenticity of that list either. Having surrendered his share to his grandchildren, he cannot now turn round and claim that he was unjustly denied his share in the land by the defendants. His claim is totally un-meritorious. It is a poor attempt to un-justly enrich himself.

Ultimately therefore, the plaintiff's suit is dismissed with costs to the defendants.

**B.N. OLAO**

**JUDGE**

**11<sup>TH</sup> MARCH, 2016**

Judgment delivered in open Court this 11<sup>th</sup> day of March, 2016

Plaintiff present in person

1<sup>st</sup> Defendant present in person

2<sup>nd</sup> Defendant absent

3<sup>rd</sup> Defendant present in person

Mr. Nyaga Court clerk present

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**11<sup>TH</sup> MARCH, 2016**