



**REPUBLIC OF KENYA.**

**IN THE ENVIRONMENT & LAND COURT AT KITALE.**

**LAND CASE NO. 75 OF 2011.**

**JOHN ESUGURU EMURIA ::: PLAINTIFF**

**VERSUS**

**ELIJAH KIPTANUI SAMBU**

**ISAAC KIPCHUMBA SAMBU**

**THOMAS KIPLAGAT SAMBU):::DEFENDANT**

**J U D G M E N T.**

**INTRODUCTION.**

1. The plaintiff is the registered owner of LR. No. Sinyerere/Kipsaina Block 2/Kesogon/459 (suit land). The four defendants are all sons of Malakwen Arap Serem who was the registered owner of LR. NO. Sinyerere/Kipsaina Block 2/Kesogon/88 which was 10 acres. The suit land is a sub-division of LR. Sinyerere/Kipsaina Block 2/Kesogon/88 which was 10 acres. Malakwen Arap Serem (defendants' father) sold one acre to the plaintiff on 23/2/2001. This one acre was later registered as LR. No. Sinyerere/Kipsaina Block 2/Kesogon/457 in the plaintiff's name.

2. The plaintiff filed this suit against the defendants seeking an order of eviction from the suit land.

**PLAINTIFF'S CASE.**

3. The plaintiff testified that on 23/2/2001 he bought one acre from the defendants' father. In the same afternoon he bought one point from the defendants' father but that there was no written agreement entered between the two. He testified that he paid Ksh. 20,000/= for the one point. On 29/3/2003 he bought a second point at Ksh. 19,000/=. He paid Ksh. 10,000/= and was left with a balance of Ksh. 9,000/= which he cleared later. The first point had been curved out by a surveyor and the plaintiff fenced it together with the one acre which he had bought. When he bought the second point, he did not engage the services of a surveyor. He took the measurements of the first point and used the measurements to curve out the second point which he fenced making his land to be one acre and two points.

4. He sent a surveyor to book an appointment at the Land Control Board. The defendants' father took him to the Land Control Board. The defendants' father agreed with him that he was to process title for the sub-division and he was to get a third point in compensation of the expenses incurred in the sub-division and processing of titles. The plaintiff then processed a separate title for the one acre and another title for the three points. The three points comprise of the suit land. There is no problem with the one acre.

5. In 2007, while the plaintiff was away on duty he was informed that his fence had been demolished by the 1st, 2nd and 3rd defendants. He visited the suit land on 8/2/2007 where he met the 1st defendant who was in a group of 5 people who were armed with crude weapons. He went and reported the incident to the area chief and the local police. He then reported the dispute to the area District Officer who advised him to file the case in court. He testified that the first defendant is utilizing two points out of the three points. It is on this basis that he is seeking for an order of eviction to issue against the defendants.

### **DEFENDANTS' CASE.**

6. The defendants gave their defence through their father who testified that he was the registered owner of LR. No. Sinyerere/Kipsaina Block 2/Kesogon/88. This land was 10 acres. He testified that he sold one acre to the plaintiff. He denied that he ever sold three points to the plaintiff. He testified that he lodged a complaint with the local District Officer regarding the plaintiff's claim to the three points but that the plaintiff never heeded the D.O's summons.

### **ISSUES FOR DETERMIANTION.**

7. I have gone through the evidence adduced by the plaintiff as well as the evidence of the defendants. There is no contention that the plaintiff bought one acre from the defendants' father. The issue for determination is whether the plaintiff bought one point on the afternoon of the date he bought the one acre and whether the plaintiff bought a second point on 29/3/2003 and lastly, whether there was an agreement that the plaintiff was to shoulder expenses of sub-division in return for being given one point of an acre.

### **ANALYSIS OF EVIDENCE.**

8. There is no evidence to support the plaintiff's allegation that on the day he bought one acre that is on 23/2/2001, he again bought one point in the afternoon at Ksh. 20,000/=. There was no written agreement made. It is very doubtful why the plaintiff could enter into a written agreement in the morning and yet on the same day in the afternoon buy additional land without entering into a written agreement.

9. Though the defendants' father testified that he never sold any land to the plaintiff, his evidence is contradicted by his own defence exhibit No. 1 in which he concedes that he sold one acre to the plaintiff and later sold to him one point which the plaintiff was buying on behalf of his sister. At least there is evidence that the plaintiff bought an additional point besides the one acre. The plaintiff produced a sale agreement dated 23/3/2003 [Exhibit 2] which shows that he bought one point at Ksh. 19,000/=. He paid Ksh. 10,000/= on the date of signing the agreement and the balance was cleared on 15/4/2003. This agreement was witnessed by the 4th defendant. The balance of Ksh. 9,000/= was witnessed by the first and fourth defendants.

10. There is no evidence to support the plaintiff's claim that there was an agreement that he was to be given one point in lieu of expenses incurred. The plaintiff did not say how much he spent on the sub-division as to warrant being given one point of an acre. If he processed his title, that was to his benefit and the defendants' father should not shoulder that. The plaintiff testified that the first defendant is utilising two points. The first defendant and or his other brothers are entitled to utilise the two points because the plaintiff never bought the same. The defendants have left one acre and one point to the plaintiff which the plaintiff rightfully bought.

11. I have looked at the minutes of the Land Control Board dated 11/6/2003 (Exhibit 3). The minutes relating to the suit land as well as the one acre bought by the plaintiff do not show any details of what was approved. This is unlike all other minutes of that day which gave details of the transaction approved such as the land reference number and the acreage of the land to be sub-divided or transferred. It is therefore not surprising for the defendants' father who was illiterate to say that he did not know how the plaintiff came to be registered for more land than he bought.

### **DETERMINATION.**

12. I find that the plaintiff is entitled to one point which he bought. On the other hand, he has failed to prove his claim in respect of the two other points. There is no interference with the one point which he bought. I therefore find that his claim in respect of the two other points occupied by the first defendant is unfounded. The plaintiff's claim is therefore dismissed with costs to the defendants.

**[Dated, signed and dated at Kitale on this 28th day of January, 2015.]**

**E. OBAGA**

**JUDGE.**

In the presence of M/s. Bett for plaintiff and M/s. Arunga for defendants.

Court Clerk – Kassachoon.

**E. OBAGA.**

**JUDGE.**

**28/1/2015.**