



REPUBLIC OF KENYA.

IN THE ENVIRONMENT & LAND COURT AT KITALE.

LAND CASE NO. 101 OF 2014.

DICKSON KIPSEREM TANUI :::::::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

ANNE KETER)

ABRAHAM RUTTO) :::::::::::::::::::::::::::::::::::::::DEFENDANTS

J U D G M E N T.

INTRODUCTION

1. The plaintiff is the son of John Kiptanui Mutai (deceased) who died on 28/11/1992. The deceased was the beneficial owner of LR. No. Chepsior/Kibuswa Block 1 (Kapcheplenget) 55 measuring 16.43 hectares (suit land). The plaintiff was granted limited grant of letters of administration ad litem on 19/5/2014.
2. The plaintiff filed this suit against the defendants in which he seeks a permanent injunction restraining the defendants or their servants from interfering with the suit land. He also sought orders of eviction of the defendants from the suit land as well as costs of the suit.
3. The defendants who were duly served with summons to enter appearance neither entered appearance nor filed defence. The hearing therefore proceeded by way of formal proof

PLAINTIFF'S CASE.

4. The plaintiff testified that the deceased who was his father was a member of Kapecheplenget Co-operative Society. By virtue of the deceased's membership, he was entitled to 16.43 hectares. The society presented an area list for purposes of sub-division. The land was sub-divided and the deceased was allocated 16.43 hectares. The deceased died on 28/11/1992 before he could process title.
5. In June, 2014, the defendants invaded the deceased's land and started putting up temporary structures on the same. When the plaintiff asked them why they were doing so, the defendants told him that they were doing so on behalf of some undisclosed third parties. The plaintiff testified that neither he nor his deceased father sold any portion of the suit land to anyone. The defendants have since moved into the structures which they erected. It is on this basis that he is seeking the reliefs in the plaint.

ANALYSIS OF EVIDENCE.

6. The plaintiff filed an area list in court. According to the area list, the deceased was entitled to 16.43

hectares. The deceased was No. 55 on the list. The plaintiff also produced a green card which shows that Chepsiro/Kibuswa Block 1(Kapcheplenget) 55 is 16.43 hectares and is in the name of the Government of Kenya.

7. The plaintiff explained that the deceased died before he could collect his title. This explains why the land is still showing that it is registered in the name of Government of Kenya. This evidence was not controverted by the defendants.

DETERMINATION.

8. I find that the suit land belongs to the deceased whose son, the plaintiff has been given limited letters of administration for purposes of filing this suit. I find that the plaintiff has proved his case against the defendants on a balance of probabilities. I grant the following reliefs.

(a) A permanent injunction restraining the defendants, their agents, servants, assigns/and/or any other person on their behalf from occupying the constructed houses, leasing, cultivating, selling or in any manner dealing with LR. No. Chepsiro/Kibuswa Block 1 (Kapcheplenget) 55.

(b) An order of eviction directing the removal of the defendants or their agents as well as structures standing on the suit land forthwith.

(c) Costs of this suit.

[Dated, signed and delivered at Kitale on this 15th day of January, 2015.]

E. OBAGA

JUDGE

In the presence of Mr. Murgor for plaintiff.

Court clerk – Kassachoon.

E. OBAGA.

JUDGE.

15/1/2015.