



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

ENVIRONMENT AND LAND COURT CASE NO. 454 OF 2014

JOEL KIPROTICH KOSKEI 1ST PLAINTIFF

KENNETH KIPROTICH MARITIM 2ND PLAINTIFF

VERSUS

SIGILAI OLE LANGAT DEFENDANT

JUDGMENT

1. The plaintiffs are the sons of the late Kipkoske Arap Cheruiyot who was a brother of the defendant herein. The plaintiffs vide a plaint dated 19th November 2014 and filed in court on 21st November 2014 have brought this suit against the defendant, who is their paternal uncle and claim that the defendant holds land parcel **Transmara/ Enaenyieny/59** in trust for himself and the plaintiffs and seek judgment against the defendant for:-
 - a. **A declaration that the defendant herein holds the parcel of land otherwise known as LR Transmara/Enaenyieny/59 in trust for himself and on behalf of the plaintiff.**
 - b. **An order for the subdivision of LR Transmara/Enaenyieny/ 59 and for the transfer and registration of a portion of 6.25 hectares thereof in favour of the plaintiff.**
 - c. **Costs of the suit**
 - d. **Such further and/or other relief as the honourable court may deem fit and expedient to grant.**
2. The defendant was served with the summons to enter appearance accompanied with the copy of the plaint and the other documents as per the affidavit of service sworn by one **Juma William** a process server on 12th January 2015 and filed in court on the same date. As per the filed affidavit of service the defendant was served on 26th November 2014 and did not subsequently enter an appearance and or file any defence to the suit. Consequently the suit was fixed for formal proof hearing on 24th September 2015 before me when I allowed the plaintiff to proceed with the hearing ex parte upon being satisfied the defendant was served the summons and failed to appear or file a defence.
3. On 24th September 2015 the 1st plaintiff testified as PW1 on behalf of himself and on behalf of his brother, the 2nd defendant. The plaintiffs called their area Assistant Chief one **Ole Kiyapi Francis** as PW2 in support of their case.
4. The 1st plaintiff testified that the 2nd plaintiff was his brother and the defendant was his paternal uncle being a brother to the plaintiffs' deceased father. The plaintiff relied and adopted his written statement of evidence as per the statement dated 19th November 2014. It is the evidence of the plaintiffs that the defendant is the brother of the late Mzee Kipkoske Cheruiyot (deceased) who is the plaintiffs' biological father. That the defendant and the plaintiffs' deceased father and one

- Alice Chelangat Kenduiyo** were the children of the late **Soi Ole Langat** from his 2nd wife while one **Shadrack Malakwa Businei** was a child from the 1st wife. The plaintiffs further evidence is that the late **Soi Ole Langat** was a member of **Olenkoroni Ground Ranch** in the **Enaenyeny** adjudication section the **Group Ranch** land was before sub division registered as land parcel number **Transmara/Enaenyeny/2** and following the subdivision of the group ranch the family of the late **Soi Ole Langat** agreed that the entitlement of **Soi Ole Langat** be shared between the two houses and be registered in the names of the sons who survived the late **Soi Ole Langat**.
5. The plaintiffs state that the defendant was registered as owner of land parcel number **Transmara/Enaenyeny/59** to hold the same on behalf of himself and on behalf of the children of the 2nd house. Land parcel number **Transmara/Enaenyeny/58** was registered in the name of **Shadrack Malakwen Businei** who was the only surviving child of the 1st house. The plaintiffs claim that the defendant holds land parcel **Transmara/Enaenyeny/59** in trust for himself and in trust for the plaintiffs who are the children of the late **Kipkoske Cheruiyot** and seeks a declaration from the court in that regard. The plaintiffs in explaining their absence from the suit land state that before his death their father had acquired a parcel of land in **Mau forest** where he was working and had settled there with his family but the land has been found to be within the **Gazetted forest** area and the plaintiffs have been given notice to vacate the area. The plaintiffs aver they have approached the defendant to give them their father's share of the suit property but the defendant refuses which has necessitated this present suit.
 6. **PW2 Ole Kiyiapi Francis** sub chief **Ole Lenku** sub location testified in support of the plaintiffs' case and confirmed the land the subject matter in this suit is within his sub-location. The witness stated he was familiar with the dispute between the parties and recounted that **Soi Ole Langat** who is deceased was a member of **Olenkoroni Group Ranch** and was allocated land by the **Group Ranch**. He however died before the land was subdivided and individual titles given. The witness testified that the late **Soi Ole Langat** had two wives and that at the time of adjudication the committee decided that his land be registered in the names of the two eldest sons in the two houses who then were to share out the land to their siblings. The witness confirmed that the defendant was registered as owner of portion number 59 on behalf of the 2nd household while **Shadrack Malakwen Businei** was registered owner of portion number 58 on behalf of the 1st household.
 7. The witness testified that in the 2nd household there were 3 children namely, the defendant, **Kipkoskei Arap Cheruiyot** who is the plaintiffs father but now deceased and **Alice Chelangat Kenduiyo**. The witness said the plaintiffs have attempted to have the matter arbitrated but the defendant has been uncooperative necessitating the plaintiffs to seek assistance from the court. The plaintiffs' advocate filed written submissions dated 21st October 2015. I have considered the pleadings, the evidence and the submissions and the issue for determination is whether the defendant holds land parcel **Transmara/Enanyieny/59** in trust for the plaintiffs and himself and whether the plaintiffs are entitled to the orders sought in the plaint.
 8. The evidence adduced by the 1st plaintiff and **PW2** is uncontroverted. The evidence establishes that **Soi Ole Langat** was the father of **Shadrack Malakweni Businei**, **Sigilai Ole Langat** and **Kipkoskei Arap Cheruiyot** and that he was a member of **Olenkoroni Group Ranch**. The land **Soi Ole Langat** held in the group ranch was family land. **Soi Ole Langat** died before the land was registered under his name and the evidence adduced establishes that the land he was entitled to in the group ranch was subdivided and registered in the name of the eldest sons in each of the households. The defendant was the eldest son in the 2nd household while the plaintiffs father **Kipkoskei Arap Cheruiyot** was his younger brother. **Shadrack Businei** was the only surviving child in the 1st household and he was registered as owner of land parcel **Transmara/Enanyieny/58** which as per the copy of the certificate of official search attached to the bundle of documents measures **6.0 Hectares**. The defendant was registered as owner of land parcel **No. Transmara/Enanyieny/59** which as per the certificate of search attached to the bundle of documents measures **12.5 hectares**. Although **Alice Chelangat Kenduiyo** is not a party to these proceedings she was present in court on 24th September 2015 when this matter was heard and when questioned by the court out of the record she stated she was married and she was not making any claim to the suit property.
 9. Quite evidently the portion registered in favour of the defendant was markedly larger than the

portion registered in favour of Shadrack Malakweni Businei of the 1st household and that may perhaps have been informed by the fact that in the 1st household there was only one son whereas in the 2nd household there was the defendant and the father of the plaintiffs. The evidence by the sub chief supports the evidence of the plaintiffs that the defendant was registered to hold the land in trust. In the premises it is my finding and holding that the defendant was registered as proprietor of land parcel **Transmara/Enanyieny/59** to hold in trust for himself and the plaintiffs' father.

10. Having considered all the evidence and the documents tendered in support of the plaintiffs' case I am satisfied that the plaintiffs have proved their case on a balance of probabilities and I accordingly enter judgment in favour of the plaintiffs in terms of prayers (a) and (b) of the plaint. I award the costs of the suit to the plaintiffs which costs shall be assessed and certified by the taxing master.

Judgment dated, signed and delivered at Kisii this 27th day of November, 2015.

J. M MUTUNGI

JUDGE

In the presence of:

..... for the plaintiffs

..... for the defendant

J. M. MUTUNGI

JUDGE