

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

P & A NO.88 OF 2002

IN THE MATTER OF THE ESTATE OF THE LATE

DOUGLAS KIPSIRNGOT RUTO – DECEASED

AND

JOSEPHINE CHEBET RUTO - PETITIONER

VERSUS

ALICE CHEPNGENO RUTO - OBJECTOR

RULING

Pursuant to the consent order recorded on 31st March 2014, this court directed the District Surveyor Bomet to visit L.R.No.Kericho/Silibwet/663 to carry out a survey to establish the following:

- i. Actual acreage of the aforesaid parcel.
- ii. Acreage of the area covered by tea buses
- iii. Propose an access road.

The District Surveyor, Bomet duly complied with the order and compiled his report which was filed in court on 27th June 2014. Copies of the report were given to learned counsels appearing in this matter. This court thereafter invited learned counsels to make submissions on the report.

I have considered the rival written submissions filed by learned counsels. Mr. Miruka learned advocate for the Petitioner, pointed out that the surveyor should have proposed how the parcel should be subdivided to agree with the confirmed grant. Mr. Ochieng learned advocate for the objector was of the opinion that the confirmed grant be rectified and redistribution be done in the ratio used in the certificate of confirmed grant dated 19th October 2009. Let me state from the outset that the District Surveyor cannot be faulted in the manner he carried out his survey. The Court order did not require him to subdivide the land as proposed in the certificate of confirmed grant. The surveyor strictly did what he was directed to do. It has however emerged that the actual acreage of the land on the ground is 22.75 acres while the certificate of confirmed grant gave the acreage as 23.23 meaning there is a shortfall of 0.48 acres. There is also another revelation shown in the surveyor's report which is to the effect that the area covered by tea bushes measures 4.5 acres while the certificate of confirmed grant gives a figure of 6 acres. I am persuaded by the submission of Mr. Ochieng that the certificate of confirmed grant should be rectified so that the actual acreage given by the surveyor can be redistributed in the ratio used in the certificate of confirmed grant dated 19th October 2009 which I so order.

The other issue which the parties seem not to agree is the proposed access road. It is the submission of Mr. Miruka that the road access proposed by the surveyor was created by the deceased *intervivos* hence his wishes should be respected. Mr. Ochieng is of the opinion that if the surveyor's proposal is accepted then it will cause unnecessary disturbance to the objector who may lose 0.40 acres. I have carefully re-examined the surveyor's proposed on the access road and it is clear that it will cause a little discomfort to the parties, particularly the objector. It must be appreciated that the changes arising from the process will obviously affect all parties in one way or the other. I am satisfied that the surveyor's proposal is fair and the most convenient for all parties to this dispute. This court adopts the

proposal by the Bomet District Surveyor on the creation of a road access. Parties to each met their own costs.

Dated, signed and delivered in open court this 31st day of July 2014.

J. K. SERGON

JUDGE

In the presence of:

- Miruka for Petitioners
- Miss. Maritim for Objector