



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND HIGH COURT

AT NYAMIRA

ELC CASE NO. 41 OF 2021

(Consolidated with ELC NO. 21 OF 2021 CMCC – Kisii)

{Formerly Kisii ELC Case No. 553 of 2016}

EVANS ORESI KENYANSA.....1ST PLAINTIFF

PETER OGENDI KENYANSA.....2ND PLAINTIFF

ISABELLAH NYABOKE KENYANSA.....3RD PLAINTIFF

ZIPPORAH NYABWARI KENYANSA.....4TH PLAINTIFF

-VERSUS-

NAFTALI KENYANSA ONCHIEKU.....DEFENDANT

RULING

The 1st & 2nd Plaintiffs are brothers while the 3rd and 4th Plaintiffs are the wives of their deceased brothers and the Defendant is the father and father in law to the Plaintiffs respectively. The Defendant is the registered owner of land Parcel No. GESIMA SETTLEMENT SCHEME/456 measuring 2.751 Hectares or thereabout. The Plaintiffs live on the suit land which is their only ancestral land and where they have planted crops. The Defendant is said to have 2 wives the first one, Biria Nyanchama Kenyansa who is deceased being the Plaintiffs' mother and mother in-law respectively. Since 1987 to 2002 the Defendant has been selling parcels of land out of his other land GESIMA SETTLEMENT SCHEME/128 measuring 135 Acres. Between 1978 and 2002 the Defendant sold the share of Rose Mong'iina Kenyansa, the 2nd wife and bought her a piece of land in Kitale leaving GESIMA SETTLEMENT SCHEME/456 being the share of the 1st wife which was hived out of GESIMA SETTLEMENT SCHEME/128. From October 2011 the Defendant has been trying to sell GESIMA SETTLEMENT SCHEME/456 and has even received part of the purchase price. The Plaintiffs are in court to stop him from disposing of the said land. This is the Plaintiff's case and they seek for either an injunction against the proposed sale or in the alternative an order for the sub-division of the land and transfer of the sub-divided units to the Plaintiffs.

The Defendant on the other hand denies the allegations in the Plaint and avers that he cannot be restrained from exercising the rights he has over his rightfully acquired land. He also says that he has been desirous of sub-dividing the land to his children and that he is equally a beneficiary of the same.

On 25/10/2018 the court held that the parties had by consent sub-divided land parcel No. GESIMA SETTLEMENT SCHEME/456. An amicable settlement was reached. This was after a Decree was issued on 07/07/2017 ordering the Defendant to Sub-divide land parcel No. GESIMA SETTLEMENT SCHEME/456 and transfer of the same to the Plaintiffs according to their respective rightful shares. This has never been implemented and there have been Application after Application. On the contrary, the Defendant is said to have sold part of the suit land to other people instead of transferring the land to the Plaintiffs as agreed in Court.

Before the Decree of the court was executed, Samwel Onchari Ombui and John Nyamweya Kenyansa sued Wycliffe Omingo, Peter Ogendi Kenyansa and Evans Oresi Kenyansa in Kisii Chief Magistrate's Court ELC Case No. 21 of 2021 claiming the ownership of GESIMA SETTLEMENT SCHEME/1461 and GESIMA SETTLEMENT SCHEME/1462 and the Plaintiffs should therefore be restrained from the alleged trespass on the same.

On 17/03/2021, the court held that the Land Registrar and County Surveyor, Nyamira do visit the suit land and establish the portions of land occupied by the Plaintiffs herein *vis a vis* those already sold to various purchasers and file a Report with a sketch map of the suit property within 45 days. The case was to be accorded priority in view of the Defendant's age. The same was filed in court on 14/12/2021 having been

prepared on 22/11/2021. Parties were allowed to make comments on the Report. The issue here is not in the nature of a boundary dispute and therefore the Land Registrar's Report was not meant to resolve the issue but to give the Court some light on what is on the ground. According to the aforesaid Land Registrar's Report, GESIMA SETTLEMENT SCHEME/456 gave rise to GESIMA SETTLEMENT SCHEME/1412 and GESIMA SETTLEMENT SCHEME/ 1413. Then GESIMA SETTLEMENT SCHEME/1412 gave rise to GESIMA SETTLEMENT SCHEME/1461 and GESIMA SETTLEMENT SCHEME/1462 among others and that is why the Plaintiffs in Kisii CMCC No. 21 of 2021 moved the court because they claim to have bought their respective portions from the Defendant herein. Of course the Plaintiffs are desirous that the resultant sub-divisions be cancelled. The Defendant has also poked holes on the Report. What I am interested in is to know when the resultant Titles i.e. GESIMA SETTLEMENT SCHEME/1461 and GESIMA SETTLEMENT SCHEME/1462 were registered.

I hereby order the Land Registrar, Nyamira to appear in court on 21/04/2022 to shed light as to when the registrations were carried out. The Registrar should also provide the Green Cards in respect to GESIMA SETTLEMENT SCHEME/456, 1412, 1457, 1458, 1459, 1460 1461, 1462 and 1463 to show the history of the suit land together with the resultant Titles. All the parties involved in this case must also appear in court personally on the aforesaid mention date.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 4TH DAY OF APRIL, 2022

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Plaintiff's Counsel: Mr. Ochwangi

Defendants' Counsel: Mr. Magara