

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL SUIT NO. 21 OF 2007

AGGREY ALUZIMBI SHIKALI..... PLAINTIFF

VERSUS

RICHARD CHESIRE CHEROP DEFENDANT

RULING

The Applicant brought the application herein seeking to be joined as a Defendant in this case. The Applicant contends that she is the one who sold the suit property to the Defendant. The Applicant contends that the suit land was 2 ½ acres and was originally known as Plot No. 216. It was part of the agreement that the Defendant was to have 2 acres and take care of the other half on behalf of the Applicant. The Applicant learnt that the Plaintiff/Respondent is claiming the same land from the Defendant, as well as her ½ acre which the Defendant was holding on her behalf.

The application was supported by the Defendant but opposed by the Plaintiff/Respondent who contends that the Applicant has no reason to be joined as a Defendant as her interest ended when she sold the land to the Defendant. The Respondent contends that the Applicant can be called as a witness to the Defendant and or be made a third party.

I have considered the application by the Applicant and the objection to the same by the Plaintiff/Respondent. There is no doubt that the Applicant is the one who sold land to the Defendant. The Applicant has annexed a sale agreement between her and the Defendant. The agreement shows that she sold two acres to the Defendant. When this dispute arose, the parties herein, that is the Plaintiff and the Respondent agreed that they send a surveyor to the ground to ascertain the respective acreage of Plot No. 293 and 294. The parties also involved the Applicant in the consent. It is therefore clear that the parties knew that the presence of the Applicant during the survey was important. The Plaintiff/Respondent cannot again turn around to say that her presence in the suit is of no assistance to the Court. The presence of the Applicant in the suit is necessary to assist the Court determine certain issues for instance how the Defendant's land was reduced to 1.4 acres when he was sold 2 acres by the Applicant. The presence of the Applicant will also assist the Court determine whether the Applicant remained with ½ an acre which she entrusted the Defendant to take care of. I find that the application has merits. The same is allowed with costs to the Applicant. Plaintiff to be amended and served on the 2nd Defendant within 14 days.

Dated, signed and delivered in Open Court on this 20th day of June, 2013.

E. OBAGA

JUDGE

In the presence of Mr. Bungei for Mr. Yano for the Defendant and Plaintiff.

Court Clerk: Joan.

E. OBAGA

JUDGE

20/06/2013