



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL SUIT NO. 97 OF 2012

CHEPOSUKUPAR LOPULOKOW PLAINTIFF

VERSUS

MUSA TUKEI A.K.A. MWETICH TUKEI

GEOFFREY TUKEI A.K.A. SPARIA TUKEI

CHEMUCHUR TUKEI DEFENDANTS

J U D G E M E N T

The Plaintiff brought this suit against the defendants seeking the following reliefs;-

1. A declaration that the defendants hold 2 hectares part of West Pokot/Chepareria/249 in trust for the plaintiff.
2. An order to issue against the defendants to subdivide and allocate the plaintiff the 2 hectares part of West Pokot/Chepareria/249.
3. Costs of the suit.
4. Any other relief the court may deem fit to grant to the plaintiff.

The defendants who were duly served never entered appearance nor filed defence. The hearing therefore proceeded by way of formal proof. The plaintiff testified that the first and second defendants are her nephews and that the third defendant who is mother to the 1st and 2nd defendant is her sister in-law. She testified that the suit land was bought by her mother. Prior to the death of her mother, she had given her 5 acres of the suit land. She later learned that the suit land had been registered in the names of the defendants.

The plaintiff contacted her lawyers Messers Katina & Co. Advocates who wrote a demand letter to the defendants. She produced the demand letter as exhibit 2. She also produced an official search exhibit 1 which shows that the suit land is in the name of the defendants. The plaintiff therefore prays that the court do order that the defendants do transfer 5 acres which they are holding in trust for her.

I have carefully gone through the evidence adduced by the plaintiff. I have to determine whether the defendants are holding the 2 hectares in trust for the plaintiff. In a case where a Plaintiff is seeking an order that the defendants are holding the land in trust for her, it is upon her to show by evidence that she is entitled to the land she is claiming. In the present case, the plaintiff says that the suit land was bought by her mother who had given her 5 acres. She testified that upon the death of her mother, she realised that the land had been registered in the name of the defendant. According to the search certificate produced, the entire suit land is 9.09 hectares. It was registered

in the names of the defendant on 1/7/1998.

From the demand letter dated 28/11/2011, it is clear that at the time the 9.09 hectares were demarcated, they included 2 hectares which had been bought by the plaintiff's mother. It is therefore not clear whether the entire 9.09 hectares was bought by the plaintiff's mother or it is the 2 hectares which were bought by the plaintiff's mother.

The plaintiff was expected to prove the existence of her right to the land before the court could make a finding that she is entitled to the land. The plaintiff merely stated that her mother had given her 5 acres out of the suit land. Though she had listed four witnesses in her list of witnesses, she never called any of those four witnesses to come and testify. There was no evidence at all on how or when her mother bought the suit land or if she ever gave her 5 acres. In the circumstances, I find that the plaintiff has failed to prove her case on a balance of probabilities. The same is hereby dismissed with no order as to costs.

Dated, signed and delivered at Kitale on this 11th day of December, 2013.

E. OBAGA,

JUDGE

COURT: Judgment delivered in the absence of Plaintiff and her lawyer at 10.09 a.m. Court clerk Lobolia.

E. OBAGA,

JUDGE

11/12/2013