



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL CASE NO.220 OF 2005**

**JOSEPH KIPLANGAT KESUI.....PLAINTIFFS**

**VERSUS**

**BERNARD LANGAT.....1<sup>ST</sup> DEFENDANT**

**ERICK K. LANGAT.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

This dispute involves a father (the plaintiff) and his two sons, the defendants over a property known as MOLO SOUTH/ LANGWEDA BLOCK 3/11 (SEE NOTES) (the suit property).

According to the plaint filed on 31<sup>st</sup> August 2005, the plaintiff claims that he purchased the suit property way back in 1974 when the defendants were toddlers; that the defendants have invaded the suit property in order to prevent the plaintiff from disposing of it in order to develop another property in Bomet. The plaintiff has further averred that the suit property is not part of the family inheritance or ancestral land and therefore his sons cannot claim any interest on it; that the 2<sup>nd</sup> defendant in conspiracy with the mother and other siblings placed a caution over the property.

When the caution was removed, the mother filed HCCC No. 50 of 2004 to restrain the plaintiff transferring or disposing of the suit property. That suit was dismissed by Koome, J (as she then was). The defendants have entered the suit property and ploughed part of it. They have refused to listen to the plaintiff rendering this action necessary. The plaintiff seeks an order, ( I suppose a declaration) that the defendants have no right or interest over the suit property and further an order of injunction to restrain them from entering, wasting or interfering with the suit property.

In their joint statement of defence, the defendants have denied invading the suit property or interfering with it.

In his testimony before the court, the plaintiff maintained that he purchased the suit property without the contribution of the defendants. That having educated the defendants who are adults with their own income and families, they cannot depend on him. He also clarified that his wife, Esther Kesui is settled on his parcel No.KERICHO/KIPCHICHIM/ 3029. He also has land in Sosit being No. 1892, which is occupied by his second wife, and another in Kericho, No.3934 which is vacant. The family land which he inherited from his parents is KERICHO No.1103 measuring 7 acres. The plaintiff stated that he was ready and has been ready to allow the defendants their siblings and mother to occupy and use this land as well as No. KERICHO 3934. He explained that he intends to sell the suit property due to its volatile location because it was invaded in the 1992 land clashes and the house on it was burnt down. It was again invaded in 1997 and once more in 2007 post election violence.

None of the defendants testified despite sufficient opportunity extended to them. Instead their mother, Esther Kesui gave evidence to the effect that she contributed to the purchase of the suit property by living with the plaintiff; that the defendants depend on the suit property by cultivating it for subsistence crops and have nowhere else to go to. She went ahead to state that the land in Bomet that the plaintiff has alleged he wants to develop no longer exists having been sold to a third party. That, in summary is the evidence presented in this dispute.

I have considered that evidence along with submissions filed by the counsel for both sides as well as authorities cited by learned counsel for the plaintiff, namely **The Registered Land Act- Cap 300, Gathiba V. Gathiba** (2001) KLR (E&L) 356, and **Mwangi & Another V. Mwangi**(1986) KLR 328. This claim is certainly not brought under the **Married Women Property Act**, 1882 and the defendants' mother's contribution is not in issue. As a matter of fact, the court in Nkr. HCCC No. 50 of 2004 found that the defendant's mother had no interest in the property. Have the defendants brought themselves within proviso to **Section 28** or the provisions of **Section 30 (g)** of the **Registered Land Act**? The defendants have not demonstrated the existence of a trust. The existence of a trust was stated in **Mumo V Makau** (2002) EA 170, is a question of fact which must be proved appropriately.

I may also add that the court in Nkr. HCCC No. 50 of 2004 specifically found that the plaintiff was the undisputed registered owner of the suit property and that the defendants have no basis to restrict or stop him from dealing with it in any manner he wished. See **Jacinta Wanjiku Kamau V. Isaac Kamau Mwangi** CA No. 59 of 2001.

The position of the defendants is similar to those of the three sons of Muriuki Marigiin **Muriuki Marigi V. Richard Marigi Muriuki & 2 others**, Nyeri C.A. No. 189 of 1996 in which the Court of Appeal stated that:

**“The appellant as the registered owner of the suit property is still alive. His property is not yet available for sub-division and distribution among his wives and children except if he personally on his own free will decides to subdivide and distribute it among them. He may not be urged, directed or ordered to do it against his own will”**

For the reasons stated, I reiterate that the plaintiff is the lawful owner of the suit property. The defendants will be restrained by an order of permanent injunction in terms of prayer (b) of the plaint.

Costs to the plaintiff.

**Dated, Signed and Delivered at Nakuru this 8<sup>th</sup> day of March, 2012.**

**W. OUKO  
JUDGE**