



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CIVIL CASE NO. 21 OF 2007 (O.S)

SARAH C. RUTO PLAINTIFF

VERSUS

FRANCIS CHERUIYOT 1ST DEFENDANT
RICHARD CHERUIYOT 2ND DEFENDANT
WILSON CHERUIYOT 3RD DEFENDANT

RULING

The Plaintiff/Applicant, **Sara C. Ruto**, seeks in her Notice of Motion dated 27th October, 2010 orders that the Defendants/Respondents “do execute at their own cost transfer forms in her favour to effect transfer to her of 1.5 acres comprised in the titles Nos. **Kericho/Kapsuser/4381, 4382, 4383 and 4384** being the resultant titles upon subdivision of **Kericho/Kapsuser/236** or in the alternative, the Deputy Registrar of this Honourable court do execute mutation and transfer forms on behalf of the Defendants/Respondents”.

The Plaintiff has a decree in her favour in this suit in which the court (the Hon. Lady Justice Mary Ang’awa) declared that she is “entitled to 1.5 acres comprised in the title No. **Kericho/Kapsuser/236**” which has been subdivided into four portions known as **Kericho/Kapsuser/4381, 4382, 4383 and 4384**. The award of 1.5 acres was premised on adverse possession.

It was averred by the Plaintiff/Applicant that the four portions are now registered in the names of the Defendants but it was not made clear which title number/s relates to the 1.5 acres land occupied by the Plaintiff.

The judgment delivered by the Hon. Lady Justice Mary Ang’awa on March 10th, 2010 states in the germane part at para 15 thus

“I would find that a claim of adverse possession had been reestablished. I grant the Plaintiff/Applicant her prayers with the costs to the Applicant/Plaintiff”.

The prayers granted by the Court were contained in paragraphs 1, 2, 3, and 4 of the Originating Summons dated 9th March, 2007. These prayers were

1. Whether the Plaintiff is entitled to 1.5 acres of land comprised in the land parcel L.R. NO.

KERICHO/KAPSUSER/236 subdivided into parcel Nos. 4381,4382,4383 and 4384) formerly owned by the late Kibet Korir (deceased) by virtue of the Plaintiff's adverse possession of the said parcel in open, quiet and peaceful occupation for a period of almost 35 years.

2. Whether the titles resultant from the subdivision of LR. NO. KERICHO/KAPSUSER/236 should be cancelled in order to pave way for excision and transfer of the 1.5 acres currently occupied by the Plaintiff.

3. Whether the Plaintiff herein should be registered as proprietor of the said 1.5 acres in place of the Defendants who are at present the registered owners/proprietors of the said parcel of land.

4. That costs of this suit be provided for.

The original parcel No. **Kericho/Kapsuser/236** measured 1.6 hectares or 3.952 acres. The claim for adverse possession related to 1.5 acres which the Plaintiff/Applicant averred she had occupied for over twelve (12) years. It is not clear which subdivided portion of plot **Kericho/Kapsuser/236** comprises the 1.5 acres, nor is it clear what the acreage of each of the four (4) subdivided portions is. In these circumstance, and bearing in mind that the portion of 1.5 acres that should be transferred to the Plaintiff/applicant is the one whose title has been extinguished by adverse possession, it is necessary that the Plaintiff/Applicant specifies the title/s in which the 1.5 acres is comprised so as to facilitate the making of the orders sought. This aspect should have been dealt with at the trial stage so as to make the judgment and the decree less vague and capable of enforcement. Unless the Plaintiff/Applicant specifies this, the order sought cannot be given as prayed for.

DATED at KERICHO this 21st day of February, 2011

G.B.M. KARIUKI, SC
RESIDENT JUDGE

COUNSEL APPEARING

Mr. W.R. Kiprono Advocate for the Respondent

Mrs. J.R. Kimeto Advocate for the Applicant