



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Civil Suit 100 of 2006

1. Land Law.
2. Originating Summons
3. Estate of female adult deceased
 - a. Administrator suing on behalf of estateMary Cherugut Tapnantet claiming 4.5ha of
Kericho/Kapsuser/2541/2542.

Original parcel of land Kericho/Kapsuser/2495

- registered in deceased name as absolute proprietor
- b. Respondent sub-divided portion into two Kericho/Kapsuser/2541
and Kericho/Kapsuser/2542 and became proprietor of the latter.
 - c. That parcel obtained fraudulently.
 - d. Court orders parcel of land be transferred back to deceased estate.
4. **Defendant in person**
 - a. the parcel of land was purchased in 1988 from the deceased
 - b. Denied fraud
 - c. Elders case the land the sub-divided to a certain acreage

5. **Trial**

- a. Part heard – viva voce

evidence – Musinga J (16.5.07)

b. Order 17 r 10 cpr Maranga J (30.4.08)

6. **Held**

a. Land part of deceased estate.

b. Prayer granted.

7. **Case Law** – Nil

8. **Advocate**

J.M. Motanya advocate from the firm of M/S J.M. Motanya & Co. advocates for the Plaintiff – present
Defendant/Respondent in person – present

IN THE MATTER OF THE ESTATE OF MARY CHERUIYOT TAPNANTET (DECEASED)

AND

**IN THE MATTER OF THE LAND PARCEL NO. KERICHO/KAPSUSER/2541 AND NO.
KERICHO/KAPSUSER/2542**

AND

**IN THE MATTER OF SECTION 143 OF THE REGISTERED LAND ACT (CAP 300 LAWS OF
KENYA)**

BETWEEN

ANDREA KIPLANGAT ARAP KOGO ADMINISTRATOR

AND

JOEL KIPROTICH SOI RESPONDENT

JUDGMENT

1: Procedure

1. Under Order XXXVI rule 1, 3 F and 12 of the Civil Procedure rules Andrea Kiplangat Arap Kogo, the administrator of the estate of the late Mary Cheruiyot Tapnantet, claimed parcels of land that the defendant/respondent alleges belongs to him. He filed a cause on 23rd November, 2006.

2. A replying affidavit was filed by the defendant/respondent in person.

3. Musinga J gave directions on 16th May, 2007 and directed that viva voce evidence be given by the parties.

4. He commenced the trial on 4th October 2007 and was not able to conclude this matter. Maraga J directed that on 30th April, 2008 the trial commences from where it had left off.

5. The trial concluded with the evidence of the Defendant on 11th May, 2009 and 13th May, 2009 before me.

II: Background

6. The genesis of the land in dispute has its roots in a leverite Marriage. One Tabaigoi wife of Tabiandet was unable to give birth to sons. She married two women, Esther Chepkoech Mara & Mary Cheruiyot Tapnantet under the leverite customary law. She was a registered proprietor of land parcel original LR. Kericho Kapsuser/1220. She sub –divided this land onto the equal portion and gave title on 29th August, 1988 to each of her wives. Esther Chepkoech Maina became the registered proprietor of Kericho/Kapsuser/2494 and Mary Cheruiyot Tapnantet leave the registered proprietor of Kericho/Kapsuser/2495.

7. It is the latter parcel of land that is of concern in this cause.

8. Unknown to the son of Mary Cheruiyot Tapnantnet the land was further sub-divided into a further portion. This gave rise to LR Kericho/Kapsuser/2541 and LR Kericho/Kapsuser/2542.

9. The respondent was registered the owner of land parcel Kericho/Kapsuser/ 2542 consisting of 0.41 ha.

10. In response to this cause the defendant claimed he was a purchaser of the said land.

11. The respondents claimed that the deceased may, have sold him the land. This matter was further arbitrated by the elders. The only claim they saw was that there be a resurvey on the acreage that he is entitled to.

II: Findings

12. This court is asked to determined whether the land parcel No. Kericho/Kapsuser/2495 measuring 4.5 Ha belonged to the deceased Mary Cheruiyot Tapnatet. The evidence show that indeed the land was registered in the name of the deceased as evidence in the green card.

13. What is being questioned is the sale of portion of the said parcel of land to the defendant/respondent Joel Kiprotich Soi. He claimed there was a sale yet the children of the deceased were not aware of this. PW2 claimed he was a minor at the time but was not aware of the sale. PW1 the elder son also ascertained to the same.
14. From the green card some time in July, 1989 the defendant was registered as proprietor of 0.41 ha in consideration of the sale of land to him.
15. According to the respondent, the land was in February, 1988, bought by him through an agreement. Both the deceased children were present. That in November, 1988 they went to the Land board and consent was given to them to undertake the transaction.
16. He adjourned the case to bring his original documents. This was the title deed and a copy of a mutation from.
17. There was no sale agreement, nor a land control consent board documentation. The title deed produced in his name is dated the 7th July, 1989 and title issued on the same. The transaction was recorded in the green card register on 4th July, 1989.
18. From the cross-examination of the PW1 and 2 witnesses by the respondent when appeared in person, he implied that the purchase sum paid was used to build the deceased a house, buy a cow and possibly educate PW2, the younger son.
19. What is clear herein is that the respondent has been issued with a genuine title deed that emanated from the original land parcel in question.
20. LR Kericho/Kapsuser 1495 belonged absolutely to Mary Cheruiyot Tapnantet as of November, 1988. By July, 1989 the title was apportioned at the lands office to parcel 2541 and 2542 respectively.
21. The respondent claims there was a sale agreement. None was produced by him. He claims that there was land consent in the presence of PW1 and 2. Both sons denied having attended any board of the land control board. Even if they had not attended the board the defendant would not have in any way not been in open occupation of the property.
22. I find that the registration and or acquisition of the land parcel LR Kericho/Kapsuser/ 2542 was acquired irregularly by the respondent who most certainly took advantage of a widow.

23. I accordingly allow this case and quash the registration of the title of land from the defendant/respondents name to the original owner now being the estate of Mary Cheruiyot Tapnantet. The lands department to effect this.

24. The respondent is to be evicted from the parcel of land within a period of 6 months and to remove any structures erected thereon from the date of this judgment.

25. I award costs of this case to the estate.

DATED this 19th day of May, 2009 at **KERICHO**

M.A. ANG'AWA

JUDGE

Advocates

J.M. Motanya advocate from the firm of M/S J.M. Motanya & Co. advocates for the Plaintiff – present

Defendant/Respondent in person – present