



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERICHO

E.L.C CASE NO. 6 OF 2016

KIPRONO ARAP KOSKE.....PLAINTIFF

VERSUS

JOHN CHERUIYOT KOSKE....DEFENDANT

JUDGMENT

INTRODUCTION

1. The Plaintiff and defendant are step brothers who are jointly registered as the owners of land parcel no. KERICHO/SILBWET/944 measuring 1.0 hectares. The Plaintiff instituted this suit against the defendant seeking an order for the sub-division of the suit property into two equal portions of 0.5 hectares.
2. The Defendant filed a defence in which he admits that the suit property is registered jointly in his name and the plaintiff's name but he is opposed to the same being sub-divided into two as there is a suit pending in Nakuru High Court, where he is jointly sued with the plaintiff in relation to the suit property.
3. In his Reply to Defence the Plaintiff stated that Nakuru HCCC No. 47 of 2008 where the Plaintiff and Defendant were sued has since been determined and a decree issued.
4. The suit was initially heard ex-parte and judgment was delivered on 30th September 2016. The Defendant subsequently applied for the said judgment to be set aside and his application was allowed. The suit was then set down for hearing and both parties testified without calling any witnesses.

PLAINTIFF'S CASE

5. The plaintiff testified that the suit property was jointly registered in his name and that of the defendant. He explained that the land initially belonged to their late father Kipkoskei Yetkei (deceased) but it had wrongfully been registered in the name of one Chuchnei Mageso. Kipkoskei Yetkei filed suit against Chuchnei Mageso and judgment was entered in favour of Yetkei. Unfortunately, the said Mageso died before the judgment was executed. The widow of Mageso applied for letters of administration vide Nakuru HC Succession Cause No. 153 of 1990 and included the suit property as one of the deceased's assets. This prompted Yetkei to file an objection in the Succession case. As Yetkei was advanced in age, he appointed the parties herein who are his sons to act on his behalf and proceed with the case. The objection was allowed and the grant that had been issued to the widow of Mageso was subsequently amended to reflect that land parcel no. KERICHO/SILIBWET/944 be jointly registered in the names of the plaintiff and the defendant herein. He produced a copy of the Amended Certificate of Confirmation of grant, copy of the title deed and certificate of Official search in respect of the suit property as his exhibits.

DEFENDANT'S CASE

6. In his testimony the Defendant admitted that the plaintiff is his step-brother. He also admitted that the suit property was jointly registered in his name and that of the plaintiff but stated that the same was to be held in trust for their late father's beneficiaries. He therefore said that the suit property ought to be divided among his late father's beneficiaries. Upon cross-examination he said that he did not amend the objection proceedings in Nakuru HC Succession Cause No. 153 of 1990 to state that the suit property should be divided among all the beneficiaries of Kipkoskei Yetkei.
7. After the close of the defence case both parties were given time to file their submissions but only the Plaintiff's counsel filed hers in which she urged the court to grant the reliefs sought.

ISSUES FOR DETERMINATION

8. The singular issue for determination is whether the suit property ought to be divided equally between the plaintiff and the defendant.

ANALYSIS AND DETERMINATION

9. It is common ground the registration of the suit property in the joint names of the plaintiff and defendant was done pursuant to the Amended Certificate of Confirmation of Grant in Nakuru Hc Succession Cause No. 153 of 1990. The defendant admitted that the suit property was not listed as one of their late father's assets and therefore it was not available for distribution among their late father's beneficiaries. In any event this court is not concerned with the issue of distribution of the estate of the late Kikoskei Yetkei. This is simply a case for the sub-division of the suit property between the plaintiff and the defendant who are currently jointly registered as owners thereof.

10. In the case of **Moses Bii v Kericho District Land Registrar & Another (2015) eKLR** the court held that where there are more than one proprietors and there is no notice as whether the title is held jointly or in common, barring any special circumstances, the default position is that the title is held in common. Similarly in the instant suit the presumption is that the property is held in common in equal undivided shares. I therefore find and hold that the plaintiff has proved his case on balance of probabilities and the suit property ought to be divided equally between the plaintiff and the defendant.

11. In conclusion, the plaintiff is entitled to the reliefs sought and I enter judgment in favour of the plaintiff and make the following final orders:

- a. An order is hereby issued that land parcel no. KERICHO/SILBWET/944 be sub-divided into two equal portions, one portion to be registered in the name of Kiprono arap Koske and the other one in the name of John Cheruiyot Koske, the plaintiff and the defendant herein respectively.
- b. The defendant is hereby ordered to avail the original title deed and execute all the requisite documents required in order to effect the sub-division of the property. In default, the Deputy Registrar of this honourable court shall execute the necessary documents.
- c. The costs of the sub-division shall be shared equally between the plaintiff and defendant.
- d. Since the parties herein are brothers, each party shall bear his own costs.

Dated and Signed this 21st day of January 2020.

J.M ONYANGO

JUDGE

Dated, signed and delivered at Kericho this 5th day of February, 2020.

ANTONY KANIARU

JUDGE