



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**LAND & ENVIRONMENT CASE NO.22 OF 2015**

**ELIZABETH NAFULA NALIKA.....PLAINTIFF**

**VERSUS**

**MICHAEL BARASA NALIKA**

**alias MUKHONGO NALIKA.....1<sup>ST</sup> DEFENDANT**

**AMBROSE KHAOYA KERE.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

[1]. The plaintiff in this case states that on or around 1990 she married one Peter Nalika Kere. She alleges that she stayed on land parcels Ndivisi/Khalumuli 863 and 865. The plaintiff alleges that she had a house on one of the lands but after her husband died the defendants immediately after burial of her late husband, decided to subdivide parcels Ndivisi/Khalumuli 865 and 863 without her consent. She avers that these were family lands and that her rights were infringed. She further states that the 2<sup>nd</sup> defendant sold her share in land parcel number Ndivisi/Khalumuli/863 in 2011 to another party. She says this was done in collusion with the 1<sup>st</sup> and 2<sup>nd</sup> defendants and that they sold the land to one Palapala Spear Laurence Munoko on 29/06/2011. She set out the particulars of fraud and collusion on the part of the 1<sup>st</sup> and 2<sup>nd</sup> defendant.

She prayed for an order of injunction to restrain and prohibit the defendants, their servants, agents and representatives from dealing in any manner with the suit land until this suit is determined. She further prays for a declaration that parcels Ndivisi/Khalumuli/865 and 863 was family land held by 1<sup>st</sup> and 2<sup>nd</sup> defendants in trust and / or subject to the interests of the family. Finally, for and order cancelling fraudulent subdivisions or transfers and that she be given 0.8Ha from Ndivisi/Khalumuli 865 and 0.4Ha from 863 and costs of the suit.

[2]. In her evidence, she stated that she was married in March 1990 to Peter Nalika Kere and had two children one 22 years and the other 19 years. She said she lived with her husband on land parcels 863 and 865. That her husband died in November 2006. She said that before her husband died they called the chairman of the Clan because he wanted to subdivide the land to his children. That they discovered the lands were in the names of Mukhongo Nalika Kere parcel 865 and Ambrose Khaoya 863.

She claims that she was chased away by the 2<sup>nd</sup> defendant from the suit lands. That she went to the Land Disputes Tribunal and she was awarded one acre but she appealed to the Western Province Land Disputes Appeals tribunal and the file got lost. She said that she is outside the suit land and would like to be next to her husband's grave.

On cross examination, she agreed her husband was not registered on any of those lands. She also admitted that Ambrose Khaoya Kere and Mukhongo Nalika Kere were first registered proprietors of their respective lands. She said that her husband wanted those lands subdivided because Ambrose had been refunded his money. She said that she knew the 2<sup>nd</sup> defendant is not now the registered proprietor and that the land had been transferred to someone else.

Finally, she admitted that she had not applied for the Letters of administration on her husband's estate.

[3]. The defendants denied the allegations of the plaintiff. The first defendant said that he is the registered owner of land parcel No.Ndivisi/Khalumuli 856 that the land was registered in his name as a first registration he was so registered on 20/6/72. He said that the plaintiff stayed with his father for some years and had no children with him. That when his father died the plaintiff left.

[4]. The second defendant stated that the plaintiff was living with his brother from 1995 to 2009 when his father passed on and that they were never properly married under any system of law. That she came with two children Ronald Wafula and Linet Naswa who were not sired by his brother. He stated that he is the first registered owner of Ndivisi/Khalumuli/863 and that the same never belonged to Peter Nalika and that he has never at any time settled on his aforesaid land. The defendant said that he later sold land parcel Ndivisi/Khalumuli/863 to a third party and that the land is no longer in his names. He produced a Search Certificate showing he was the first registered owner registered on 20/6/72. He asked for the plaintiff's suit to be dismissed with costs.

Also produced was the funeral programme of Peter Nalika Kere. It showed that the plaintiff lived with the deceased as a third wife but their marriage was not confirmed by both families of the deceased and the plaintiff. It also said that the deceased and the plaintiff had no children between them.

[5]. The question for determination is whether the plaintiff is entitled to the prayers sought.

[6]. The plaintiff has not obtained Letters of administration of the estate of Peter Nalika Kere. She has not proved that she was married to him under Customary Law or under any statute. Infact, her plaint states that she went to live with the deceased Peter Nalika Kere where her previous husband died. The pieces of land that she claims, land parcels Ndivisi/Khalumuli 863 and 856 have never been registered in the names of her alleged husband Peter Nalika Kere. The registered owners were registered in 1972 eighteen (18) years before she was ever married by the said Mr. Kere deceased. Those parcels were still in the names of the defendants all the years she lived with the deceased Peter Nalika Kere.

[7]. I find that the plaintiffs claim to be without any merit at all. The fact that she stayed and cohabited with the said Peter Nalika Kere for some years does not give her any rights to the suit lands. Her claim is without any merit and it is dismissed.

I will not order any costs in this matter. Each party shall bear their own costs.

Ruling read in open Court.

**DATED and DELIVERED at BUNGOMA this 10<sup>th</sup> day of March, 2017.**

**S.N. MUKUNYA**

**JUDGE**

**In the presence of:**

Court Assistants - Chemutai/Joy

Plaintiff - Present

Defendant - Present