



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**LAND CASE NO. 150 OF 2013**

**1. ARUBE ATOOT EKUDUN**

**Alias MARGARET ARUPE EKUTUT**

**2. REBECCA EREGAI ..... PLAINTIFFS**

**VERSUS**

**JULIUS LOKUSI ALIMAMOI ..... DEFENDANT**

**J U D G E M E N T**

1. The first plaintiff is one of the administratrix of the estate of her late husband Eregai Epetet Lemunya (deceased) who was the legal owner of Parcel No. 261 Gidea Settlement Scheme in Trans-Nzoia County. The second plaintiff is daughter of the first plaintiff who is also her Co-administratrix.
2. The defendant is a brother to the deceased who was husband to the first plaintiff.
3. The plaintiffs brought this suit against the defendant seeking an order declaring the plaintiffs the legal owners of Plot No. 261 Gidea Settlement Scheme and that those claiming under him do move out of the suit land failing which they be evicted. The plaintiffs also pray for a permanent injunction restraining the defendant and all those claiming under him from interfering with the plaintiff's quiet enjoyment of the suit land.
4. The defendant who was duly served with summons to enter appearance neither entered appearance nor filed defence. The case therefore proceeded by way of formal proof.

**PLAINTIFF'S CASE**

5. PW1 Arube Ekudun alias Margaret Ekudun testified that she was the wife of the deceased who died on 28/4/2005 as per death certificate produced as exhibit 1. Soon after the death of the deceased, the defendant who is her brother-in-law confiscated all documents of the deceased from her.
6. The deceased was the owner of Plot No. 261 of Gidea Settlement Scheme having been allotted the same by the Settlement Fund Trustee. She produced a charge from the Settlement Fund Trustee (exhibit 2) showing that the plot in issue was in the name of the deceased.
7. The defendant secretly moved to Kitale High Court where he obtained letters of administration in respect of the estate of the deceased. When the plaintiffs became aware of this, they moved to Kitale High Court where they filed an objection. The grant which had been issued to the defendant was nullified and in place thereof, the plaintiffs were appointed administrators of the estate of the deceased. The first plaintiff produced a ruling arising out of the objection lodged in Kitale High Court Succession Cause No. 21 of 2006 exhibit 3.

8. The Plaintiffs obtained a limited granted for purposes of bringing this suit against the defendant. The limited granted was produced as exhibit 4. The plaintiffs contend that notwithstanding the decision of the court in the Succession cause, the defendant has refused to move out of the plaintiffs land. The defendant has gone ahead to lease the land to third parties who are utilising it to the exclusion of the plaintiffs. It is on this basis that they have come to court seeking the orders in the plaint.
9. I have gone through the documents produced by the first plaintiff. There is no doubt that the land was allotted to the deceased who was husband of the first plaintiff. The defendant's attempt to have the land of the deceased was thwarted when the High Court nullified the grant which he had obtained without involving the plaintiffs.
10. The Plaintiffs having established that they are entitled to the estate of the deceased. The defendant has no business keeping them out of what belongs to them by law. I find that the plaintiffs have proved their case against the defendants on a balance of probabilities. Consequently, the plaintiffs are hereby declared as the sole proprietors of Plot No. 261 Gidea Settlement Scheme. An order of eviction is hereby given removing the defendant and or any other person claiming under him from the suit land. There is also issued an order of permanent injunction barring the defendant and or anyone claiming under him from interfering with the plaintiffs' quiet enjoyment of the suit land. The Plaintiffs shall have costs of the suit.

Dated, signed and delivered at Kitale on this 14th day of May, 2014.

**E. OBAGA,**

**JUDGE**

In the presence of Mr Chebii for plaintiff. Court Clerk – Kassachoon.

**E. OBAGA**

**JUDGE**

**14/5/2014**