



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 131 OF 2013**

**ELISHA KARE BUSIENEI & 2 OTHERS.....PLAINTIFF**

**VERSUS**

**ELIZABETH JEPCHOGE SIRMA & 7 OTHERS.....DEFENDANTS**

**RULING**

1. During the hearing of this suit on 5/5/2014 Mr Akenga for the Plaintiffs raised an objection regarding Mr Bitok's participation in the suit. Mr Bitok is an advocate for the 2nd defendant. The objection was on the ground that Mr Bitok's firm is the one who acted for both the vendor and purchaser in respect of a sale agreement regarding plot No. Eldoret Municipality Block 14/604. The agreement was between Japhet Sirma and Masinde Kuloba. Mr Akenga therefore contends that Mr Bitok has knowledge of matters relating to LR NO. Eldoret Municipality Block 14/604 and as such he cannot act for the 2nd defendant in a case pitting her against the plaintiffs.
2. The application was opposed by Mr Bitok who argued that the sale in question is not contested and therefore cannot make a basis for him being barred from representing the 2nd defendant.
3. The application by Mr Akenga was made after Mr Bitok had been allowed to peruse the file and he indicated that he was ready to proceed. The plaintiffs then called their first witness who testified at length. Mr Akenga then surprisingly made the application at the middle of the hearing. Mr Akenga did not come out clearly on what basis he was asking the court to bar Mr Bitok from representing the second defendant.
4. In seeking to understand Mr Akenga's application, I have had to go through the pleadings and proceedings herein. The first defendant is described in the pleadings as Japhet Kibyiego Chepkwony. He is sued as administrator of the estate of Elizabeth J. Sirma. In the evidence by the plaintiffs first witness, he is referred to as Japhet Sirma. I will take it that he is one and the same person.
5. Eldoret Municipality Block 14/604 is about 19.67 hectares. On 22/5/2010 one Edward Masinde Kuloba bought a plot measuring 0.1971 of an hectare from Japhet Kipyego Chepkwony. A look at the copy of the sale agreement does not show who drafted it. However as Mr Bitok has conceded that he is the one who drafted it. I take it that the signature thereon was appended by him.
6. The plaintiffs are contending that LR NO. Eldoret Municipality Block 14/604 was fraudulently registered in the name of the late Elizabeth J. Sirma. They want the court to find that the said land belongs to both the plaintiffs and the defendants.
7. There is no contention that there was a sale agreement between Japhet Kipyegon Chepkwony and Edward Masinde Kuloba. There is also no contention that the plot which Edward Masinde Kuloba bought is part of the block in dispute. The question which arises for determination is whether the participation of Mr Bitok in the agreement between Edward Masinde Kuloba and Japhet Kipyegon Chepkwony can be a basis for him being barred from representing the 2nd defendant.

8. In the present case there is no contention that the agreement between Japhet Kipyegon Chepkwony and Edward Masinde Kuloba exists. There is no dispute regarding the two parties to the agreement. The said agreement is being brought in evidence to demonstrate that Japhet Kipyegon Chepkwony is selling part of the land which is in question. There is no confidential information held by Mr Bitok which is going to be used in favour of one party to the detriment of the other. Mr Bitok is not acting for the first defendant Japhet Kipyegon Chepkwony. He is acting for the 2nd defendant who is alleged to have been registered as owner of a different parcel of land which the plaintiff allege was fraudulent.
9. I find that there is no basis upon which Mr Bitok can be barred from representing the second defendant. Mr Akenga's oral application is therefore dismissed with costs to the 2nd defendant.

It is so ordered.

Dated, signed and delivered at Kitale on this 4th day of June, 2014.

**E. OBAGA**

**JUDGE**

In the presence of Mr Kiarie for 1st defendant and Mr Akenga for plaintiffs.  
Court Clerk – Kassachoon.

**E. OBAGA**

**JUDGE**

**4/6/2014**