



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITALE

CIVIL SUIT NO. 135 OF 2009

ALEXANDER KIPCHOGE PLAINTIFF

VERSUS

CHRISTOPHER KIPLAGAT KOECH.....}

WILLIAM KIPKORIR TUWEI.....}DEFENDANT

J U D G M E N T

The Plaintiff is the father of the two Defendants. The Plaintiff owns land Parcel No. LR Chepsiro/Kibuswa Block 2/Kiptenden/321 measuring 9.300 hectares. In or around 2002, the Plaintiff wanted to subdivide this land amongst his four sons and one daughter including himself. A dispute arose between him and the two Defendants. The dispute was taken before Cherangani Land Disputes Tribunal which ruled that each of the Plaintiff's sons were to get 4 acres each and the Plaintiff's daughter was to get 2 acres. The Tribunal also ruled that the Plaintiff was to get 7 acres. The verdict of the Tribunal was adopted as judgment of the Court on 19/11/2002 vide Kitale Senior Principal Magistrates Court Land Case No. 41 of 2002.

The Plaintiff started the process of executing the decree of the Court. The Defendants who were aggrieved with the decision of the Tribunal moved to Kitale High Court where they obtained leave to bring a motion for judicial review seeking to quash the Tribunal verdict. Leave was granted but the main motion was never filed. In the meantime, the Defendants lodged a caution on the title of the Plaintiff. The Plaintiff has since then been unable to proceed with the process of sub-division. The Plaintiff moved to Court in 2009 seeking an order of removal of the caution lodged by the Defendant as well as a permanent injunction restraining the Defendants, their servants and or agents from interfering with the Plaintiff's use, occupation and possession of the land.

The Plaintiff testified that the Defendants have prevented him from utilizing the land and have been cutting down trees which he had planted. The Defendants have been chasing away his daughter Florence whom they do not want to get a share of his land.

In his defence, the first Defendant stated that he is opposed to the manner in which his father wants to subdivide his land. He contends that he helped his father to offset a loan he had taken to purchase the suit land and that he assisted in educating his younger siblings. He therefore contends that he is entitled to more than 4 acres which his father is offering him.

In his defence, the second Defendant stated that he is opposed to the manner in which his father has proposed to subdivide his land. He contends that when his father was unable to repay the loan, he employed him to work on the land to raise money for repayment of the loan. He further stated that he assisted one of his younger sibling by paying his fees on the understanding that his father was to abandon

his plans to sell of part of his land to raise fees. He contends that the understanding between him and his father was that once he subdivided his land, he was to give him a larger share on that account.

I have considered the Plaintiff's case as well as the defence of the two Defendants. There is no contention that the land is registered in the name of the Plaintiff. It is the Plaintiff who bought the land from a loan he secured from the Agricultural Finance Corporation. The issue which arises for determination is whether the caution lodged against the Plaintiff's title should be removed or not. The Defendants seem to contend that since they assisted in repaying the loan and educating their siblings, they should get more acres than the rest. They therefore argue that the caution should be in place until their father agrees to their demands of more acres than he is willing to give them.

The Plaintiff has been very fair in the manner he is proposing to subdivide his land. He has given each of his three sons 4 acres. His daughter has been given two acres and he has remained with slightly more than 4 acres. Though the decree in Land Case No. 41 of 2002 indicates that he should have 7 acres, this is not practically possible since the entire land is slightly over 22 acres. The Plaintiff testified that he is ready to subdivide his land as per the verdict of the Tribunal. He also stated that he does not wish to decrease the acres given to his two sons who are the Defendants in this case. The Tribunal may not have realized that their calculations add upto 25 acres when the land is actually slightly over 22 acres.

In African societies, a father is at liberty to subdivide his land as he wishes. His sons cannot force him to give them land which they are demanding. Even if he were to decline to subdivide his land during his lifetime, the law remains on his side. In the present case, the Plaintiff has chosen to subdivide his land in a fair manner. Educating ones siblings is not a guarantee to more land. In any African Society, it is a noble idea for an able sibling to assist his other siblings by paying their school fees. This does not automatically translate into more favours in recognition of the assistance extended. The Defendants have no business standing on their father's way as far as subdivision of his land is concerned. I find that the Plaintiff has proved his case on a balance of probabilities. I enter judgment in his favour in the following terms:

1. An order is hereby given directing the removal of a caution lodged on LR No. Chepsiro/Kibuswa Block 2/Kiptenden/321.
2. A permanent injunction is hereby granted restraining the Defendants, their servants or agents from interfering in any manner with the Plaintiff's use, occupation and enjoyment of his land known as LR Chepsiro/Kibuswa Block 2/Kiptenden/321.
3. As the Plaintiff expressly stated that he does not wish to have costs of this suit, an order is hereby given that there shall be no order as to costs.

Dated, signed and delivered in Open Court on this 3rd day of October, 2013.

E. OBAGA

JUDGE

In the presence of M/S Arunga for Plaintiff and both Defendants.

Court Clerk: Isabella.

E. OBAGA

JUDGE

03/10/2013