



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 26 OF 2016**

**CHEPOGH KYOTUM**

**(Suing as the personal representative of the Estate of**

**KO-PARARARA CHEPOKAPTUL.....PLAINTIFF**

**VERSUS**

**RONGETIA MANGUT.....DEFENDANT**

**JUDGMENT**

**Introduction**

1. The plaintiff commenced this suit vide a plaint dated **2<sup>nd</sup> February, 2016** and filed in court on the same date seeking the following orders:
  - a. **A declaration that the defendant acts of obtaining title deed in his name on the parcel of land known as West Pokot/Keringet "A"/302 is malicious, unlawful, fraudulent, illegal and null and void for all intents and purposes.**
  - b. **That an order of rectification of the register to the suit property by cancellation of the title deed issued in the name of the defendant**
  - c. **Cost of the suit**
  - d. **Any other relief the court deem fit to grant.**
2. The defendant filed defence dated **4<sup>th</sup> March, 2016** on **8/3/2016** and the plaintiff's reply to this defence was filed on **24/3/2016**.
3. The plaintiff filed submissions on **28/11/2018** and the defendant on **25/1/2019**.

**The Plaintiff's Case**

4. According to the plaint the plaintiff's case is that she is the last born daughter of the late **Ko-Parapara Chopokaptul** who was the co-registered owner alongside the defendant of plot No. **West Pokot/Keringet "A"/302**; that each of the co-registered owners had purchased and was entitled to **4 acres** of the suit land; that during demarcation the suit land was registered in their joint names to hold in common and equal undivided shares; that the plaintiff has been in occupation of **4 acres** of the suit land just like the defendant but the plaintiff sold part of their entitlement in order to raise medical fees for their mother; that their mother passed on in **2008** whereupon the defendant fraudulently registered the entire parcel in his name and obtained a title thereto. Based on this allegation of fraud the plaintiff sought the above prayers.

**The Defendant's Defence**

5. The defendant filed a defence on **8/3/2016** denying the plaintiff's claim. He denies that the deceased purchased **4 acres** or the plaintiff is in possession of the disputed parcel of land and maintains that he is the registered owner of the entire parcel and that the prayers sought are not maintainable.

**The Plaintiff's Reply**

6. The plaintiff filed a reply to the defence on **24/3/2016** in which she admitted that she is married and resides elsewhere other than on the suit land the same still belonged to her late mother.

## EVIDENCE OF THE PARTIES

### The Plaintiff's Evidence

7. **PW1** the plaintiff testified on **2/10/2017**. She stated that the defendant is a neighbour; that her mother bought the land; that her mother had 4 children, all girls, 2 of whom are deceased; that she produced her mother's death certificate as **P. Exhibit 1**, she testified the deceased's children sold 4 acres out of the land after dividing the land into 4 portions of one acre; that the persons they sold the land to were in occupation thereof but the defendant chased them all away claiming the entire parcel belongs to him; she maintained that the defendant never married her mother and that the land records showed that they own the land together. Her evidence was that her mother had wanted to have the land subdivided into two portions but the defendant had failed to finalize the payment. She further stated that title deed was issued in **January, 2009** after her mother's demise. She admitted that succession proceedings has been taken out in respect of her mother's estate and produced a grant of letters of administration *ad litem* as **P. Exhibit 4**. A demand letter addressed to the defendant was produced as **P. Exhibit 5**. Her position the defendant did not obtain the title legally as he should not have taken all the eight acres since that would deny the plaintiff and her sisters their inheritance.

8. On re-examination she admitted that by the time her mother died all the land had been sold and named several persons as the buyers.

9. **PW2, Munyereti Masai**, testified on the same date. She adopted her written statement filed on **2/2/2016** as her evidence-in-chief in this matter. Her evidence is that her husband one **Masai Chemasweti** sold 4 acres to plaintiff's mother and 4 acres to the defendant in **1973**; that the plaintiff's mother was able to pay in kind, that is 4 cows and 1 goat while the defendant paid 1 cow for the portions they purchased. That each proceeded to occupy their portions thereafter. According to her the land over and above 4 acres which the defendant claims belongs to the plaintiff's mother.

10. On cross-examination she stated that the land was sold before adjudication and survey and it was subdivided by the new owners. Part of it was also sold before the title issued.

11. **PW3, Aggrey Kavehi**, a **Land Registrar**, testified on **20/11/2017**. According to him the plaintiff's mother and the defendant owned the property in common in equal undivided shares. He produced the green card for the suit land as **P. Exhibit 2** according to him as at **9/4/1994** the defendant and the plaintiff's mother were still proprietors of the suit land but the green card record did not show in what shares they owned the property. Title deed was issued on **15/5/2007** and therefore the entire plot was transferred to the defendant. He produced **P. Exhibit 3** a copy of the adjudication record which at its **paragraph 8** had this entry pursuant to **Section 23** of the Land Adjudication Act "*proprietors in common each holding (1/2) equal undivided shares*". The execution of that document by both land owners was way of thumb printing at **paragraph 9** of that adjudication record. That execution confirmed that the land owners had been informed of the contents of the land adjudication record form and that they accept the details to be correct. Their thumbprints were witness at **paragraph 10** by one Joseph Kukui Maket of Land Adjudication Office Kapenguria. The form is also signed at **paragraph 11** by a Committee Chairman. At **paragraph 12** one "**J.H. Okundo, Executive Officer**" has affixed his name confirming that the details on the form are accurate. All this is said to have occurred between the dates **26/9/1978** and **29/9/1978**. According to the Land Registrar the two of them having owned the property as the proprietor in common without any of them having rights over the other share of the land, the Land Registrar concerned erred in not showing the exactly what was reflected in the copy of the land adjudication record analysed above while registering the land and issuing the title. His conclusion is that the plaintiff's mother would have gotten half of the land if it was subdivided even though that was not shown on the green card. He attributed all the errors to the Land Registrar.

### The Defendant's Evidence

12. **DW1, Rongetia Mangut**, defendant, testified on **12/11/2018**. He adopted his statement dated **4/4/2018** and filed in court record as his evidence-in-chief. His evidence is that he purchased the land from one Masai Chemaswet at **Kshs.2,200/=** in the year **1960**; that the plaintiff's mother sought refuge on the suit land from her matrimonial home after a quarrel with her husband one Anuko Rwataran; that upon the defendant asking her to go back to her matrimonial home she refused; that when she realized that she could not withstand the dispute between her and the defendant she migrated to her daughter's place at Komole village where she died and was buried. He dismisses the plaintiff's claim as false. He produced the original title in his sole name as **D. Exhibit 1**. He testified that the surveyor certified the land is **8** acres and produced a surveyor's report as **D. Exhibit 2**. He reiterated the contents of his defence that the plaintiff does not reside on the land. However he admitted that the land was originally registered in his name and that of the plaintiff's mother; that the plaintiff's mother informed him she was leaving and so the two co-owners should visit the land's office so as to change the land registration records to reflect his sole name as proprietor thereof and that that was done without any objection from any quarters. He conceded that some people have bought land from the daughters of the deceased and that they live on the land.

13. In cross examination he maintained his version that though the land was registered in his name and that of the plaintiff's mother the latter transferred her share to him as she said that she no longer needed the land. He admitted that they were originally meant to share the land equally and that they both signed the adjudication record. He admitted that he still live on only 4 acres. He stated that the deceased never bore any children while on the land and that there was no blood relationship between them, the only relationship between him and the deceased being that she had midwived his children. He averred that he went to the Land Control Board with the deceased but never filled any papers. He denied paragraph of his statement saying that there was a dispute between him and the deceased. He confirmed that the purchasers live on 4 acres which used to be the deceased's land but there was a conflict between him and the purchasers. He averred that by **29<sup>th</sup> January, 2009** the purchaser had not settled on the land and that they did so after the plaintiff's mother passed on. However he confirms that he never involved the deceased's daughter while getting his title deed for the whole parcel.

14. **DW2, Lolinganya Tonyou** testified on **12/11/2018**. He adopted his statement dated **4/4/2016** as his evidence-in-chief and was subsequently examined. His evidence in chief is that the defendant purchased the land and paid for it by way of 3 cows; that the plaintiff's mother came later and settled on the land and started claiming a portion from the defendant; that later she departed for Komole village where her daughter lived and where she died and was buried. According to him if the land was hers she could have been buried on the said land. The land, according to him the land belongs to the defendant.

15. On cross examination it turned out he did not know the acreage of the land; that she was aware that there is a boundary between the parcels that each of the land owners lives on their respective side; that the defendant lives on his side even now and the purchasers who bought the deceased's land live on the rest of it.

16. On re-examination by Mr. Lowasikou, he seems to contradict his earlier statement in examination in chief by stating that the defendant and deceased bought the land together. She also confirms that the plaintiff's mother had lived on the land before her demise.

17. The submissions of the defendant were filed on **25/1/2019**; it would appear that the plaintiff never filed any submissions in this matter for none appear in the court file.

## **DETERMINATION**

### **Issues for Determination**

18. I have considered the pleadings, the evidence of the parties and their submissions. The issues that arise from the pleadings in this suit are as follows:-

- a. Whether the land was purchased by the plaintiff's mother and the defendant as owners in common.**
- b. Whether the registration of the suit land in the name of the defendant is fraudulent.**
- c. Whether an order of rectification of the register by cancellation of the title in the name of the defendant should issue.**
- d. Who should bear the costs?**

**(a)**

In the final analysis I issue the following orders:

- a. A declaration that the defendant acts of obtaining title deed in his name on the parcel of land known as West Pokot/Keringet "A"/302 is malicious, unlawful, fraudulent, illegal and null and void for all intents and purposes.**
- b. An order of rectification of the register to the suit property by cancellation of the title deed issued in the name of the defendant and reversion into the old title in the name of the two co-owners of the suit land.**
- c. The defendant shall bear the costs of this suit.**

It is so ordered.

**Dated, signed and delivered at Kitale on this 26<sup>th</sup> day of March, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**26/03/2019**

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Lowasikou for the Defendant

Ms. Chebet for the plaintiff

**COURT**

Judgment read in open court.

**MWANGI NJOROGE**

**JUDGE**

**26/03/2019**