



**REPUBLIC OF KENYA**

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

**LAND CASE NO.100 OF 2018**

**JAPHETH MARANGA MOGAKA.....PLAINTIFF**

**VERSUS**

**MARY JEPKEMBOI BARTILOL.....1<sup>ST</sup> DEFENDANT**

**THE COUNTY LAND REGISTRAR, UASIN-GISHU.....2<sup>ND</sup> DEFENDANT**

**THE HONOURABLE, THE ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

By a plaint dated 14<sup>th</sup> August 2018 the plaintiff herein sued the defendant for the following orders:

- a) A declaration that the plaintiff is the owner of quarter of an acre forming part of L.R. No. Eldoret Municipality/Block 20 (Kapyemit) 71
- b) An order compelling the 1<sup>st</sup> defendant to attend the requisite Land Control Board and obtain consent to transfer the said  $\frac{1}{4}$  of an acre land and execute the requisite transfer documents and or in the alternative, an order directing the Deputy Registrar of this court to execute all the requisite documents to facilitate issuance of title by the County Land Registrar, Uasin Gishu to the plaintiff.
- c) The plaintiff further prays that upon completion and or compliance of the orders to be issued as above in favour of the plaintiff, the court do the removal or lifting of the **restriction** ordered placed by the High Court to secure the  $\frac{1}{4}$  acre plot out of Eldoret Municipality/ Block 20 (Kapyemit)71 for the plaintiff.
- d) Costs of the suit.

The defendants were served with summons to enter appearance and filed a memorandum of appearance but failed to file a defense within the stipulated period therefore the matter proceeded by way of formal proof. The Honourable Attorney General participated in the hearing but the 1<sup>st</sup> defendant did not take part.

**Plaintiff's case**

The plaintiff gave evidence and stated that he purchased  $\frac{1}{4}$  acre of land from one Raphael Bartilol Chesang, the deceased husband of the 1<sup>st</sup> defendant vide a sale agreement dated 22/5/91. It was further his evidence that the deceased received the full payment of the purchase price which monies were paid as confirmed by the plaintiff's witness one Esnas Nambuye who used to work in the same office with the plaintiff.

The plaintiff further stated that the 1<sup>st</sup> defendant was granted Letters of Administration by the High Court at Eldoret in Succession Cause No. 198 of 2012. The High Court issued a Consent Order dated 18/9/2017 which ordered thus:

- a) 2.28 hectares less  $\frac{1}{4}$  of an acre instead of the whole portion of Eldoret Municipality/Block 20 (Kapyemit) 71.
- b) **The said  $\frac{1}{4}$  of an acre be set aside to await the outcome of the intended suit to be filed at the Environment and Land Court, Eldoret by the objector (plaintiff)**
- c) The County Land Registrar, Uasin Gishu do place a restriction on the register relating the  $\frac{1}{4}$  acre portion after sub-division of

Eldoret Municipality/ Block 20 (Kapyemit) 71.

It was the plaintiff's evidence that a restriction was registered against the suit parcel of land to secure the  $\frac{1}{4}$  acre land and this is the reason the plaintiff seeks an order for its lifting at the conclusion of this suit to enable the plaintiff obtain title.

The plaintiff further stated that after the demise of the defendant's husband, the defendant and her family refused to allow the plaintiff to take possession of his share of land. Further that the plaintiff is the one who moved the Succession Court to facilitate the issuance of the grant. The plaintiff produced documents as exhibits to show that he is the rightful purchaser of the portion of suit land. The plaintiff therefore urged the court to grant the orders as prayed in the plaint.

PW 2 gave evidence and stated that he was the one receiving money and issuing receipts to the plaintiff at Nyairo & Co. Advocates' offices. He stated that the plaintiff should be given the land.

Counsel for the plaintiff filed written submissions and reiterated the evidence of the plaintiff and submitted that the plaintiff's evidence is unchallenged. He therefore urged the court to grant the orders as prayed in the plaint as the plaintiff had established his case against the defendant according to the required standard of proof.

### **Analysis and determination**

The defendants were served with summons to enter appearance and filed appearances but failed to file defences within the stipulated period by the law and procedure. The Attorney General who appeared for the 2<sup>nd</sup> and 3<sup>rd</sup> defendants participated in the case but the 1<sup>st</sup> defendant never did even though there was an Advocate on record who was duly served with a hearing notice. This matter therefore proceeded against the 1<sup>st</sup> defendant ex parte.

The issue for determination by the court is as to whether the plaintiff is entitled to the orders sought. The plaintiff produced an agreement for sale of the suit land and several other documents as exhibits before the court to prove his case. Of relevance is a consent order in Succession Cause No. 198 of 2012 dated 29<sup>th</sup> September 2017 with the following terms:

- a) The application for confirmation of grant dated 7<sup>th</sup> December 2015 be and is hereby amended to read: 2.28 ha thereabouts less  $\frac{1}{4}$  of an acre instead of the whole portion of Eldoret Municipality/Block 20 (Kapyemit) 71.
- b) The said  $\frac{1}{4}$  of an acre shall be set aside to await the outcome of the intended suit to be filed at the Environment and Land Court by the objector.
- c) The Grant issued on 26<sup>th</sup> March 2015 be confirmed in respect of the remainder of the parcel of land known as Eldoret Municipality/Block 20 (Kapyemit) 71.
- d) The caution lodged by the objector against Eldoret Municipality/Block 20 (Kapyemit) 71 be and is hereby lifted by County Land Registrar Uasin Gishu to facilitate the above subdivision.
- e) The County Land Registrar Uasin Gishu to place a restriction on the register relating to portion of  $\frac{1}{4}$  acre of the subdivision of Eldoret Municipality/Block 20 (Kapyemit) 71
- f) Parties be at liberty to move the court after the determination of the case before the Environmental and Land Court.

From the consent order it is clear that the plaintiff is entitled to the order sought in this case. This case is in respect of the implementation of what had been agreed to by the parties. The plaintiff's evidence is clear and is uncontroverted. From the documents produced in court and the evidence adduced, I find that the plaintiff has proved his case against the defendants. I therefore make the following orders:

- 1) A declaration is hereby issued that the plaintiff is the owner of  $\frac{1}{4}$  of an acre forming part of L.R. No. Eldoret Municipality/Block 20 (Kapyemit) 71
- 2) An order is hereby issued compelling the 1<sup>st</sup> defendant to attend the requisite Land Control Board and obtain consent to transfer the said  $\frac{1}{4}$  of an acre land and execute the requisite transfer documents within 30 days and or in the alternative, the Deputy Registrar of this court to execute all the requisite documents to facilitate issuance of title by the County Land Registrar Uasin Gishu to the plaintiff.
- 3) The Land Registrar do remove the **restriction** ordered placed by the High Court to secure the  $\frac{1}{4}$  acre plot out of Eldoret Municipality/ Block 20 (Kapyemit)71 for the plaintiff.
- 4) The 1<sup>st</sup> defendant to pay costs of the suit.

**Dated and delivered at Eldoret on this 25<sup>th</sup> day of April, 2019.**

**M.A ODENY**

**JUDGE**

**JUDGMENT READ IN OPEN COURT** in the presence of Mr.Miyienda and in the absence of the Advocates for the defendants.

Mr. Mwelem – Court Assistant