



**REPUBLIC OF KENYA**

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

**E & L CASE NO. 52 OF 2016**

**TULA CHEBET (Suing as the Legal Representative of**

**the Estate of CHEBET BARMALA (DECEASED).....1<sup>ST</sup> PLAINTIFF**

**MICHAEL LIMO RUTO (Suing as the Legal Representative of**

**The Estate of CHEBET BARMALA (DECEASED).....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**THOMAS KIBET alias RUTO CHEBET.....DEFENDANT**

**JUDGMENT**

**Tula Chebet and Michael Limo Ruto (hereinafter referred to as plaintiffs)** suing as the Legal representatives of the Estate of Chebet Barmala (deceased) being the daughter and grandson respectively of Chebet Barmala have come to court against **Thomas Kibet alias Ruto Kibet (hereinafter referred to as the defendant)** claiming that the 1<sup>st</sup> plaintiff's father Chebet Barmala (deceased) and who died in 1978 at the age of 90 years had 3 wives.

The plaintiffs aver that the 1<sup>st</sup> plaintiff's mother Kobilo Chebet (deceased) was the first wife of Chebet Barmala whilst the 2<sup>nd</sup> plaintiff's grandmother Sokomo Chebet was the deceased 2<sup>nd</sup> wife. It is claimed that the said Chebet Barmala owned 3 parcels of land, one at Arror area, another at Kapsumai area and another one at Kuserwo area all situate within Elgeyo Marakwet County.

It is alleged that the parcel of land at Kuserwo Location then measuring approximately 11.8 hectares became known as Title No. Moiben/Kimnai/539. The former parcels of land at Arror and Kapsumai areas were bequeathed to the said Chebet Barmala by his clan, that is Kaptek clan whilst the later parcel of land number Moiben/Kimnai/539 was acquired by Chebet Barmala in his own individual capacity.

It is alleged that upon acquiring the said parcel of land, the 1<sup>st</sup> plaintiff's father, Chebet Barmala and his first wife Kobilo Chebet and his 2<sup>nd</sup> wife, Sokomo Chebet and their children, the 1<sup>st</sup> plaintiff and Tula Ruto moved onto and resided on the parcel number Moiben/Kimnai/539.

It is claimed that the 1<sup>st</sup> plaintiff and her step sister, Tula Ruto were brought up on the parcel of land. The plaintiffs state that while Chebet Barmala, Kobilo Chebet, Sokomo Chebet, Tula Ruto and Tula Chebet were living on the said land, Chebet Barmala married his third wife Toyoi Chebet, the defendants' mother and brought her to live on the said parcel of land as well. The defendant was born by the 3<sup>rd</sup> wife and during the registration exercise, he was registered as the absolute owner of the parcel of land but holding the land in trust for the family. It is alleged that even after registration, each house continued to utilize its portion of land on Moiben/Kimnai/539. The rest of the parcels are occupied by the defendant.

It is alleged that the parcel of land has now been subdivided into 723 measuring 9.3 Ha and 724 measuring 0.57 Ha which has been sold to one Lawrence Kipchumba Chelimo.

The plaintiffs have demanded the remaining land to be subdivided into 3 portions and be shared among the parties. The plaintiffs ultimately pray for:

**(a) An order of a declaration that the defendant holds 3.93 hectares of land comprised in land reference number MOIBEN/KIMNAI/723 on trust for the 1<sup>st</sup> plaintiff, an order of a declaration that the defendant holds 3.93 hectares of land comprised in land reference number MOIBEN/KIMNAI/723 on trust for the 2<sup>nd</sup> plaintiff and the remainder, that is, 3.36 hectares of the said land reference number MOIBEN/KIMNAI/723 on trust for himself (the defendant).**

**(b) An order of a declaration that the said trust be brought to an end.**

(c) An order directing the Land Registrar, Elgeyo Marakwet County to cause that parcel of land comprised in Title No. Moiben/Kimnai/723 to be subdivided into 3 parts/portions of approximately 3.93 hectares, approximately 3.93 hectares and approximately 3.36 hectares.

(d) An order directing the Land Registrar, Elgeyo Marakwet County to cancel the current Title Deed in respect of the said land reference number Moiben/Kimnai/723 and in its place issue fresh Title Deeds of land measuring approximately 3.93 hectares in the name/in favour of TULA CHEBET, the 1<sup>st</sup> plaintiff herein, another portion measuring approximately 3.93 hectares of the said land in the name/favour of Michael Limo Ruto, the 2<sup>nd</sup> plaintiff herein and another portion of the said land measuring 3.36 hectares in the name of Thomas Kibet, the defendant herein.

(e) An order directing the Land Registrar, Elgeyo Marakwet County to rectify and or amend the relevant register/records to reflect the new measurements and/or changes.

(f) An order compelling the defendant to execute all the conveyancing documents/applications and to seek the requisite consents to subdivide and to effect transfer of approximately 3.93 hectares of land contained in the said land reference number Moiben/Kimnai/723 into the name of Tule Chebet, approximately 3.93 hectares of land contained in the same land into the name of Michael Limo Ruto and the remainder of the said land approximately 3.36 hectares into his own name and in default, the Deputy Registrar of Eldoret Environment & Land court do sign the requisite conveyancing documents and to do all that is required in order to transfer the said pieces of land into the names of the parties herein according to their said respective shares plus costs of this suit.

The defendant filed a statement of defence generally denying the allegations in the plaint.

When the matter came for hearing, **Tula Chebet PW1**, stated that Chebet Barmala was her father who died long time ago. Thomas Kibet is her brother. Her father had three wives namely Kobilo Kibet (her mother), Sogomo Kibet, mother to Tula Kibet and mother to the defendant, Thomas Kibet. According to the plaintiff, the land was registered in the defendant's land as a trustee.

**PW2, Michael Limo Ruto** who lives at Kuserwo Location, Elgeyo Marakwet states that Chebet Barmalla was his maternal grandfather, being a father to his mother. Ruto Chebet is his uncle. He was registered as the owner of the land as a trustee. **PW3, Maurice Biwott Chelimo** testified that he was the retired assistant chief who knew Chebet Barmala even before adjudication was done in Chemunada area. The suit land belonged to Chebet Barmala. Barmala lived on the and with his 3 wives.

**PW4, John K. Chelimo**, an Assistant Chief state that the suit land was worked on by the 3 wives and that the plaintiffs have been working on their respective portions. **PW5, Joel C. Rotich** stated that Mzee Chebet Barmala had 3 wives and they all lived on the suit land with their children. Upon passing on, Mzee Chebet Barmala's body was buried on the land upon his death. He states that the old man shared his land to his 3 wives. The portion of land belonging to the defendant was partly sold off.

The defendant was given an opportunity to call witnesses in his defence but failed to do so. He did not testify.

I have considered the submissions by the plaintiff and do find that the only issue for determination is whether there exists a trust in respect of the suit land. It is a fact that the suit land was acquired by Chebet Barmala and registered in the name of the defendant. The late Chebet Barmala was very old and therefore, the land was registered in the name of the defendant. The land could not be registered in the names of his three wives because of the traditional discrimination against the women. The fact that the plaintiffs have been in possession of their portion of land is an indication that they have a beneficial interest in the suit land and that the defendant is holding the title to the land in trust for the plaintiffs. I do find that the plaintiffs have proved their case on a balance of probability and therefore, I do grant a declaration that the defendant holds 3.93 hectares of land comprised in land reference number MOIBEN/KIMNAI/723 on trust for the 1<sup>st</sup> plaintiff, an order of a declaration that the defendant holds 3.93 hectares of land comprised in land reference number MOIBEN/KIMNAI/723 on trust for the 2<sup>nd</sup> plaintiff and the remainder, that is, 3.36 hectares of the said land reference number MOIBEN/KIMNAI/723 on trust for himself.

Further I do grant a declaration that the said trust be brought to an end and the Land Registrar, Elgeyo Marakwet County to cause that parcel of land comprised in Title No. Moiben/Kimnai/723 to be subdivided into 3 parts/portions of approximately 3.93 hectares, approximately 3.93 hectares and approximately 3.36 hectares.

Furthermore, I do grant an order directing the Land Registrar, Elgeyo Marakwet County to cancel the current Title Deed in respect of the said land reference number Moiben/Kimnai/723 and in its place issue fresh Title Deeds of land measuring approximately 3.93 hectares in the name/in favour of TULA CHEBET, the 1<sup>st</sup> plaintiff herein, another portion measuring approximately 3.93 hectares of the said land in the name/favour of Michael Limo Ruto, the 2<sup>nd</sup> plaintiff herein and another portion of the said land measuring 3.36 hectares in the name of Thomas Kibet, the defendant herein and therefore the Land Registrar, Elgeyo Marakwet County to rectify and or amend the relevant register/records to reflect the new measurements and/or changes.

Lastly, an order compelling the defendant to execute all the conveyancing documents/applications and to seek the requisite consents to subdivide and to effect transfer of approximately 3.93 hectares of land contained in the said land reference number Moiben/Kimnai/723 into the name of Tule Chebet, approximately 3.93 hectares of land contained in the same land into the name of Michael Limo Ruto and the remainder of the said land approximately 3.36 hectares into his own name and **IN DEFAULT**, the Deputy Registrar of Eldoret Environment & Land court do sign the requisite conveyancing documents and to do all that is required in order to transfer the said pieces of land into the names of the parties herein according to their said respective shares. Each party to bear own costs. Orders accordingly.

**Dated and delivered at Eldoret this 18<sup>th</sup> day of July, 2019.**

**A. OMBWAYO**

**JUDGE**