



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 13 OF 2017**

**ABEI KOSIYAE INGOLOL.....1<sup>ST</sup> PLAINTIFF**

**JACKSON EKIRU KOSIYAE.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**JESSICA IRIA EBEL.....1<sup>ST</sup> DEFENDANT**

**ESINYEN EBEL.....2<sup>ND</sup> DEFENDANT**

**ROBERT EBEL.....3<sup>RD</sup> DEFENDANT**

**AWA EWOL.....4<sup>TH</sup> DEFENDANT**

**JOHN KONO.....5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By a plaint dated 2/2/2017 and filed in court on the same date the plaintiffs sought the following orders against the defendants jointly and severally:-

**(a) An order of permanent injunction restraining the defendants whether by themselves, their servants or agents, members of the family and/or otherwise howsoever from wrongfully interrering the remains of LUCY IKARU on the plaintiffs property.**

**(b) A declaration that the plaintiffs are absolute owners of the suit property.**

**(c) Costs of this suit.**

**(d) Any other relief this court may deem it to grant.**

2. The plaintiffs' case is that they are the equitable and beneficial owners of an unsurveyed plot located at Nabulon village in Kanamkemer location; that land is said to be part of estate of one Kosiyae now deceased; they aver that they were awarded the land in some arbitral proceedings; one Lucy Ikaru passed on 28/1/2017; the said Lucy is said to be a blood sister to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants, a niece to the 4<sup>th</sup> defendant and an in-law to the 5<sup>th</sup> defendant; she is also said to be a niece to the 1<sup>st</sup> plaintiff and a cousin to the 2<sup>nd</sup> plaintiff, the 1<sup>st</sup> plaintiff being the sister to the Lucy's mother who is now the deceased, it is alleged that the defendants intend to bury the remains of Lucy Ikaru on the land subject matter of this suit hence the prayers as set out above.

3. The defendants never filed any memorandum of appearance or defence despite being served with summons and plaint and other documents as evidenced by the affidavit of service sworn by one **Pukah K. Edgar** filed on 7/2/2107.

4. The 1<sup>st</sup> plaintiff **Abei Kosiyae**, testified on 31/5/2019 when this suit came up for hearing. The 2<sup>nd</sup> plaintiff **Jackson Ekiru Kosiyae** testified on 31/5/2016. No documents were produced in evidence by either witness.

5. The plaint in this matter does not give a clear identity of the land in question. It does not show any number or reference. It does not annex any map or documents as evidence of allocation of the land to any of the plaintiffs. The arbitral proceedings alluded to in the plaint were produced as **P. Exhibit 1** at the hearing. Proceedings signed by the County Executive Committee Member, Physical Planning and Urban

Areas Management, Turkana County dated 28/11/2014 were produced as **P. Exhibit 2**. The only document filed with the plaint is a letter dated 5/12/2104 which is not addressed to anyone in particular but which seems to summon some people whom it does not name.

6. There is evidence from the documents produced to the effect that the plaintiffs are in occupation of some land which was a subject of dispute between them and the deceased Lucy Ikaru and that before Lucy died the dispute over who owns the land was heard and determined in their favour. The conclusion was that Lucy Ikaru was only hosted and accommodation by 1<sup>st</sup> plaintiff on the land and she did not buy any land from her. It was also ordered by the County Commissioner no compensation should be paid to Lucy Ikaru because she had not purchased the land.

7. Should the plaint be struck out for violation of **Order 4 rule 3** of the **Civil Procedure Rules**? I have considered the pleadings and the evidence in this case. **Order 4 rule 3** states as follows:

**“Where the subject matter of the suit is immovable property the plaint shall contain a description of the property sufficient to identify it.”**

8. In my view the arbitral proceedings **P. Exhibit 1** and **P. Exhibit 2** show that the land in dispute exists and is recognized by the authority as the land the plaintiffs occupy. I take judicial notice that much of the land in Turkana is not adjudicated. However the parties herein appear to know the exact dimensions of the portion claimed on the ground and to be in occupation thereof. Is a judgment in their favour in this unopposed suit in order?

9. Ordinarily in areas not affected by lack of land adjudication I would be hesitant and consider a pleading such as the one before me to be grossly inadequate. However for the reasons stated hereinabove, I find that in this case and for the purposes of preserving order on the ground, I must give orders that do substantive justice to the parties in the light of the arbitral proceedings mentioned above.

10. Consequently I issue the following orders:

**(a) An order of permanent injunction restraining the defendants from interring the remains of Lucy Ikaru on the portion of land occupied by the plaintiffs.**

**(b) An order that Lucy Ikaru had no right or interest to the property occupied by the plaintiffs but was only hosted by the 1<sup>st</sup> plaintiff.**

It's so ordered.

**Dated, signed and delivered at Kitale on this 16<sup>th</sup> day of October, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**16/10/2019**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the parties

**COURT**

Judgment read in open court.

**MWANGI NJOROGE**

**JUDGE**

**16/10/2019**