



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E&L CAUSE NO. 287 OF 2017

BEREECH JEPKETER MATUTU.....PLAINTIFF

VERSUS

RICHARD KIPCHIRCHIR NYANGO

(suing as the legal Administrator of the estate of the late

PAULINE CHEBOKWONY NYANGO.....1ST DEFENDANT

LAND REGISTRAR NANDI COUNTY.....2ND DEFENDANT

JUDGMENT

By a plaint dated 10th May 2017, the plaintiff herein sued the defendants for an order that:

- a. The NANDI COUNTY LAND REGISTRAR do transfer 1 acre out of NANDI/MUTWOT/15 as per the decree issued by KAPSABET LDT NO. 40/2011 and registered as entry No. 3 dated 19th August 2011 at the lands Registry Kapsabet.
- b. That the Land Registrar do issue a title deed to the plaintiff.
- c. Costs of this suit.
- d. Any other relief that this Honourable Court may deem fit and just to grant.

The defendants were served with summons to enter appearance but they never did so within the stipulated period. The 1st defendant filed a defence out of time on 19th October 2017 after the expiry of the stipulated period. The plaintiff applied for interlocutory judgement against the defendants which was endorsed on 28/7/17. The matter was then fixed for formal proof with an order that the plaintiff do serve the defendants with a hearing notice. The same was served and an affidavit of service filed in court as proof.

The plaintiff testified that the mother of the 1st defendant sold to her 1 acre of the suit land at a consideration of Kshs. 50, 000/ which she paid in full. She produced the sale agreement and letters of administration as exhibits Nos 1 &2 respectively. She also stated that they did a case at the Kapsabet Land Disputes Tribunal of which the Tribunal awarded her the land. She produced the proceedings of the LDT No. 40/11 and the award as exhibit No.4. The plaintiff also testified that the award of the Tribunal was adopted as the judgement of the court and she produced the decree of the Kapsabet court as exhibit No.5

She further stated that the decree was registered at the lands office Kapsabet on 19/8/11 but so far, she has not been given the land. She produced the registration of the decree as an exhibit in court. The plaintiff further stated that she carried out a search which indicated that she was to be given 1 acre as per the registered decree. She prayed that the court do grant her orders as prayed in the plaint.

Counsel for the plaintiff filed written submissions and reiterated the plaintiff's evidence and urged the court to grant the orders as prayed as the plaintiff had proved her case.

Analysis and Determination

This is a straight forward case where the plaintiff was awarded 1 acre by a Tribunal and the same was adopted as a judgement of the court. The decree was registered at the land's Registry Kapsabet but no action has been taken by the Land Registrar to implement the decree.

The plaintiff gave evidence and produced documents which supported her case. Her evidence has not been controverted by any evidence from the defence. I have considered the evidence, the documents produced and submissions of counsel and find that the plaintiff has proved her case and therefore deserves the orders sought.

I therefore enter judgement in favour of the plaintiff in the following terms:

- a. That the NANDI COUNTY LAND REGISTRAR do transfer 1 acre out of NANDI/MUTWOT/15 as per the decree issued by KAPSABET LDT NO. 40/2011 and registered as entry No. 3 dated 19th August 2011 at the lands Registry Kapsabet.
- b. That the Land Registrar do issue a title deed to the plaintiff.
- c. That the 1st defendant do pay the costs of this suit to the plaintiff.

Dated and delivered at Eldoret on this 23rd day of January, 2018.

M.A ODENY

JUDGE

Judgment read in open court in the presence of Mr. C.F Otieno holding brief for Mr. Kitur for Plaintiff.

Mr. Koech – Court Assistant.