



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT AT KERICHO

E.L.C CASE NO. 9 OF 2015

GRACE CHEPKWONY.....PLAINTIFF

VERSUS

MUSA KIPKOSKE CHEPKWONY ALIAS

KIPKOSGEI ARAP CHEPKWONY.....1ST DEFENDANT

ALFONSE KIPRUTO BORE.....2ND DEFENDANT

SIGILAI CHEPKWONY.....3RD DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff has instituted this suit against the defendants for the removal of a caution lodged by the defendants on land parcel number KERICHO/KABIANGA/932. The Plaintiff claims that she is entitled to a portion of the said parcel of land measuring 0.525 hectares by virtue of the fact that she is one of the beneficiaries of the estate of Taptele W/O Nyige Deceased pursuant to the rectified grant issued in Kericho HC Succession Cause No. 109 of 2009.

2. The Defendants filed a joint Defence denying that the plaintiff is entitled to any portion of the suit land. They further state that they are the only beneficiaries of the estate of Taptele W/O Nyige Deceased in respect of the suit property to the exclusion of all others including the Plaintiff.

3. At the hearing of the case the Plaintiff testified that she is the daughter-in-law of the late Taptele W/O Nyige who is the registered proprietor of land parcel number KERICHO/KABIANGA/932 while the 1st and 3rd Defendants are her brothers-in-law. The 2nd Defendant is her step-son. It was her further testimony that following the death of Taptele W/O Nyige a Grant of Letters of Administration was issued in respect of the estate of the said Taptele W/O Nyige. The said Grant was confirmed and a Rectified Certificate of Confirmation of Grant was issued on 30th July 2012. She produced a copy of the Rectified Grant which indicates the heirs of Taptele's estate as follows:

- i. Sigilai Chepkwony Kericho/Kabianga/932 1.05 HA
- ii. Kipkosgei Chepkwony Kericho/kabianga/932 1.05 HA
- iii. Paul Kirui Kericho/Kabianga/932 1.05 HA

iv. Grace Chepkwony Kericho/Kabiango/932 0.525HA

v. Michael Bore Kericho/Kabianga/932 0.525HA

4. The Plaintiff testified that she has not been able to get her share of the land she inherited from the late Taptele as the 1st and 2nd Defendants have lodged a caution on the suit property. She stated when she learnt about the caution she filed a complaint with the Land Registrar, Kericho. The Land Registrar wrote to the Defendants requesting them to go and sign the necessary forms so that each of the beneficiaries would get their title deeds but they refused to appear at the Lands office thus prompting her to file this case.

5. Only the 1st and 2nd Defendants testified. The 1st Defendant testified that he was not aware of the Succession cause filed in respect of the estate of his late mother Taptele W/O Nyige and he was therefore not privy to the manner in which her estate had been divided.

6. The second Defendant testified that the Plaintiff was her step-mother. He further testified that his mother died while he was very young and he was brought up by his uncle and grandmother Taptele. He testified that by the time his father died he was staying in Soin where he had established a home for the Plaintiff and he did not own any land in Kabianga. He further testified that he was given land in Kabianga because that is where he grew up. He stated that he did not know when the Grant in respect of the estate of the late Taptele W/O Nyige was confirmed and even though he testified that he had applied to annul the Grant, he did not produce any document to that effect.

7. This is a fairly straight forward case. The main issue for determination is whether the caution lodged by the 1st and 2nd Defendants in respect of the suit property should be removed.

8. I have considered the evidence adduced by the parties together with the submissions filed by their respective counsels. It is common ground that the suit property is registered in the name of the late Taptele W/O Nyige. It is also common ground that the suit property has been divided among the heirs of the late Taptele Nyige in accordance with the rectified Confirmation of Grant dated 30th July 2012. In the said Grant, the Plaintiff is entitled to 0.525HA of the deceased's estate. No evidence was adduced to show that the said Grant has been revoked. In the circumstances the defendants have no justification for denying the Plaintiff her rightful share of the suit land by lodging a caution on the suit property.

9. It is my finding that the Plaintiff has proved her case on a balance of probabilities. Accordingly, I enter judgment for the Plaintiff and make the following final orders:

a. That the caution lodged by the Defendants on 25th August 2008 in respect of land parcel number KERICHO/KABIANGA /932 be removed forthwith.

b. That the Executive officer of this Honourable court is hereby directed to execute all the necessary documents in respect of land parcel number KERICHO/KABIANGA/932 to effect the same in terms of the rectified Certificate of Confirmation of Grant dated 30th July 2012 issued in Kericho HC Succession Cause No. 109 of 2009 In the matter of the Estate of the late Taptele W/O Nyige.

c. The costs of this suit be borne by the Defendants.

Dated, signed and delivered at Kericho this 21st day of February, 2018.

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J.M ONYANGO

JUDGE

In the presence of :

1. Mr. Motanya for the Plaintiff.
2. No appearance for the Defendant.
3. Court Assistant – Rotich.