



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 345 OF 2014

CHRISTOPHER KIPTOO KANDA.....1ST PLAINTIFF

MICHAEL YEGO KANDA.....2ND PLAINTIFF

SAMUEL KIMOSOP KANDA.....3RD PLAINTIFF

MUSA KIMOSOP KANDA.....4TH PLAINTIFF

VERSUS

ELIAS CHEMWENO.....1ST DEFENDANT

ELGEYO MARAKWET COUNTY LAND REGISTRAR....2ND DEFENDANT

JUDGMENT

By a plaint dated 17th November 2014 the plaintiffs herein sued the defendants for:

- a) A declaration that the registration of the 1st defendant as owner and proprietor of all that parcel of land known as Lelan Kabiego/51 was done in trust for the plaintiffs in respect of their portions and should be restituted to them.
- b) Order that title procured by the 1st defendant over lelan Kabiego/51 in respect of 4.8 acres each owned and occupied by the plaintiffs be cancelled and, in their place, fresh titles do issue to each of the plaintiffs for their respective acres.
- c) Permanent injunction do issue restraining the defendants from interfering with the plaintiffs', use, ownership, occupation and utility of respective portions of the whole of suit land.
- d) Costs of this suit
- e) Any other or further relief as the court may deem fit.

This matter was filed contemporaneously with an application for an order for interim inhibition stopping the transfer and disposal of the suit land which was granted by the court.

The 2nd defendant filed a defence and list of documents and at the hearing of the case, the state Counsel Mr Ngumbi indicated that they are not opposed to the plaintiff's suit and therefore it could proceed for formal proof. He stated that they had filed a defence and a list of documents. The 1st defendant neither entered appearance nor filed a defence.

It was the plaintiff's case that he had sued the defendants in respect of the suit land which is registered in the name of Chemweno Kanda who was his elder brother. He stated that his late father decided that the land be registered in the name of their elder brother Chemweno.

The plaintiff further testified that he occupies 4 acres of the disputed land and that his brother was given 2 acres as appreciation. He stated that the defendant went to Iten court and obtained letters of administration without informing the plaintiff.

He further stated that both his mother and father died and were buried on the suit land. It was further his evidence that the plaintiffs are entitled to 4 acres each apart from the defendant who has 6 acres of which the plaintiff has no issue with. He relied on the list of documents filed in court to support his case which included pleadings in the citation cause No. 44 of 2012, certificate of official search, order issued on

25th June 2014, chief's letter dated 5/9/12, letter from Elgeyo Marakwet District Land Registrar dated 29/8/14 amongst others.

The plaintiff therefore prayed for judgement to be entered against the defendants as prayed.

Counsel was given 14 days to file written submissions but he did not do so. The court therefore relied on the pleadings and the evidence of the plaintiff.

Analysis and Determination

The issues for determination in this case are as to whether the suit land was held in trust for the plaintiffs, whether the 1st defendant's title should be revoked and re parcelled into five portions and lastly whether the plaintiffs are rightfully and legally on their respective portions of the suit land.

The 1st defendant did not file any response to the suit but the 2nd defendant filed a memorandum of appearance and defence. The court had earlier issued an order of inhibition stopping any dealings or transfer of the suit land until the suit is heard and determined. The court also allowed the plaintiffs to file a citation which was done to bring in the 1st defendant.

During the hearing of the case the 2nd defendant's Counsel indicated that they were in support of the plaintiff's case as such the case could proceed by way of formal proof. In their defence they stated that they were strangers to the averments in the plaint.

From the evidence and the documents produced by the plaintiff, it is clear that the suit land was held in trust for the plaintiffs. This is buttressed by the several letters from the chief of Kabyego location and Kararia in Kapsowar. It is also not in dispute that the plaintiffs are in occupation of the suit land together with the defendant who is occupying 6 acres of the suit land.

It was the plaintiff's evidence that the land was given to their elder brother to hold in trust for them but his son the 1st defendant took out letters of administration without their knowledge and registered the suit land in his name by way of transmission. It is further not in dispute that the elder brother of the plaintiffs who is the defendant's father was given 2 extra acres as a token of appreciation which the plaintiffs have no issue with. It is therefore clear that the land was held in trust for the brothers who are the plaintiffs.

On the issue whether the 1st defendant's title should be revoked and re parcelled into 5 portions, the plaintiff adduced evidence that they are entitled to 4 acres each apart from the defendant who is entitled to 6 acres, the late father having been given an additional 2 acres as a token of appreciation of which they do not have a problem with. I find that the plaintiffs have proved that they are entitled to the revocation and re parceling of the 1st defendant's title which the father had held in trust for the plaintiffs.

Finally, it is also not disputed that the plaintiffs are rightfully on their respective portions of land as they have lived on the suit land from time immemorial where their parents were buried. They have not been evicted or asked to vacate by anyone.

I have considered the pleadings, the supporting documentation and the evidence of the plaintiffs and I find that the plaintiffs have proved their case to the required standard. I consequently enter judgement against the defendants for the plaintiffs in the following terms.

- a) That it is hereby declared that the registration of the 1st defendant as owner and proprietor of all that parcel of land known as Lelan Kabiego/51 was done in trust for the plaintiffs in respect of their portion and should be restituted to them.
- b) An order is hereby issued that title procured by the 1st defendant over **LELAN KABIEGO/51** in respect of 4.8 acres each owned and occupied by the plaintiffs be cancelled and, in their place, fresh titles to issue to each of the plaintiffs for their respective acres.
- c) A Permanent injunction is hereby issued restraining the defendants from interfering with the plaintiffs' use, ownership, occupation and utility of respective portions of the whole of suit land.
- d) The 1st defendant to pay costs of this suit.

Dated and delivered at Eldoret this 1st day of March 2018

M.A ODENY

JUDGE

Judgment read in open court in the presence of Mr. Ngigi for Plaintiff and in the absence of the 1st defendant and 2nd defendant.

Mr. Koech – Court Assistant.