



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 180 OF 2017 (O.S.)**

**ABRAHAM LUCHELI LUVONGA (SUING AS**

**THE ADMINISTRATOR OF THE ESTATE OF**

**BUSHASHA LUCHERI (DECEASED).....PLAINTIFF**

**VERSUS**

**FRED OKEA, ALIAS FRED OKEYA.....1<sup>ST</sup> DEFENDANT**

**KIPKORIR ROTICH CHEBOI .....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff filed the Originating Summons herein on the 15<sup>th</sup> November 2017. He seeks the following orders:

- (a) *A declaration that the late Bushasha Lucheri has acquired 2 acres /Kapcherop/1700 by way of adverse possession;*
- (b) *An order directing the County Land Registrar Elgeiyo Marakwet County to amend the register of parcels to have title deed no Cherangany /Kapcherop/1700 registered in the name of the late Bushasha Lucheri after cancelling the name of the 2<sup>nd</sup> respondent herein as the registered owner.*
- (c) *Costs of the suit.*
- (d) *Any other relief.*

**THE PLEADINGS**

**The plaintiff's case**

2. The plaintiff's case is contained in the supporting affidavit and the oral evidence that he gave at the formal proof hearing of this suit on 28/5/2018.

3. In the supporting affidavit he avers that that he is the biological son and also the administrator of the estate of the deceased Bushasha Lucheri who died on 5/11/2009 and exhibits a copy of the Limited Grant to that effect. He further avers that in 1983 the deceased had purchased 2 acres of land from the 1<sup>st</sup> respondent who had bought the same from the 2<sup>nd</sup> respondent and that the deceased and his family took vacant possession of the suit land in the same year. He states that they stayed thereon uninterruptedly, openly and without interference from anybody till Bushasha Lucheri died in the year 2009 while still living on the suit land. After the demise of Bushasha Lucheri the plaintiff continued living on the suit land, and has been living on that land for 36 years now. The land is now registered in the name of the 2<sup>nd</sup> respondent, and records show he was so registered in 1994. It is the averment of the plaintiff that efforts by the deceased to have the land transferred to him were in vain and he died before the transfer was effected.

4. The defendants did not file any reply to the Originating Summons.

5. The plaintiff alone testified on the 28<sup>th</sup> May 2018. He reiterated much of what is in the Originating Summons and the supporting affidavit. He produced documents including a grant of letters of administration, a copy of the sale agreement dated 4/9/1983, Certificate Of Official Search in respect of the suit land, the chief's letter dated 26/7/16, and the Assistant County Commissioner's Letters dated 18/8/2016 and 7/9/16. The latter three documents evince the attempts to resolve the issue by the local administration. A demand letter from Kaosa & Co

advocates was also produced in evidence. The defendants are said to have defied these attempts, hence this suit.

**DETERMINATION**

6. I have considered the Originating Summons and the evidence given in this case. The Originating Summons is not opposed. I have examined the documentary evidence given by the plaintiff. It supports his claim. I find that the plaintiff had proved his claim on a balance of probabilities against both defendants and I hereby grant judgment in terms of prayers **A, B** and **C** of the Originating Summons dated **15<sup>th</sup> November 2017**.

**Dated, signed and delivered at Kitale on this 12<sup>th</sup> day of June 2018.**

**MWANGI NJOROGE**

**JUDGE**

**12/6/2018**

Coram: Before Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Gacathi holding brief for Mr. Khaosa for the plaintiff

N/A for the defendant

**COURT**

Judgment read in open court.

**MWANGI NJOROGE**

**JUDGE**

**12/6/2018**