



**REPUBLIC OF KENYA**

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

**ELC NO. 328 OF 2016**

**MARY JERUTO KIMUTAI.....PLAINTIFF**

**VERSUS**

**MICHAEL KIMUTAI CHERUIYOT.....1<sup>ST</sup> DEFENDANT**

**KIMOI CHERUIYOT CHEPKIURGAT.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

By a plaint dated 10<sup>th</sup> November 2016 the plaintiff herein sued the defendants jointly and severally for the following orders:

- a) An order that land Reference No. IRONG/MUTEI/584 be subdivided into 3 portions of 0.8 of an hectare, 0.40 of an hectare and 0.40 of an hectare in accordance with the parties respective shares on the ground and that the plaintiff be registered as the proprietor of 0.8 hectare of land excised from the said LR No. IRONG/MUTEI/584 and that the defendants do sign all the requisite survey, mutation forms and transfer documents and the plaintiff to meet her share of the said exercise and stamp duty. In the event the defnats refuse to execute any of the requisite documents/to actualize the foregoing, the Deputy Registrar of this Honourable court to do so.
- b) An order for compelling the defendants to allow the surveyor, Elgeyo Marakwet County to sub - divide LR No. IRONG/MUTEI/584 into 3 portions of 0.40ha, 0.40 ha and 0.8 Ha respectively and generally perform and/or carry out his duties/assignments in the said land without hindrance from any quarters and that the OCS Iten Police Station to supervise compliance of the orders of this Honourable Court
- c) An order of eviction against the 1<sup>st</sup> defendant, his agents and /or servants from the plaintiff's portion of land.
- d) An order of permanent injunction restraining the defendants, their agents and/or servants from re-entering, occupying or continued occupation/possession and /or wasting the plaintiff's 2 acres of land contained in LR No. IRONG/MUTEI/584 or interfering with the suit land.
- e) Costs of the suit.

The defendants were served with summons to enter appearance but they neither filed a memorandum of appearance nor a defence. They were however present in court during the hearing having been served with a hearing notice. The court gave them an opportunity to give evidence even though they had not filed any papers in the interest of justice.

**Plaintiff's Case.**

The plaintiff gave evidence and adopted her statement as filed in the court as her evidence in chief. She stated that the she owns 2 acres out of the suit land measuring 1.62 hectares which was to be excised from the suit land No. IRONG/MUTEI/584. She stated that the defendants were to get 1 acre each and that the register at the lands office at Iten clearly shows their respective shares as this was done in 2015.

It was further the plaintiff's evidence that a survey was done and she took possession of her 2 acres and that she has been in occupation since 2007. She stated that she put up a fence and a structure and has been cultivating her portion of the suit land. It was the plaintiff's testimony that they obtained a consent from the Land Control Board to subdivide the suit land into 3 portions in December 2015 which she produced as an exhibit before the court. She further stated that in February 2016 a government surveyor came to subdivide the land but the same v 4 did not take place due to the differences between the defendants' families.

She stated that the defendants have frustrated her efforts to subdivide the land necessitating the filing of this suit. She also produced a copy of grant of letters of Administration indicating how much each person was to get upon the subdivision of the suit land and photographs of the

structures that she has put up. She therefore urged the court to grant the orders as prayed for in the plaint.

PW 2 gave evidence on behalf of the plaintiff and stated how he was aware of the suit land and that he had accompanied the surveyors to sub divide the land but the defendants obstructed the survey work.

### **DW 1's Case**

The 1<sup>st</sup> defendant stated that the land belonged to his late father who had two wives. He stated that they filed a Succession Cause and sold 2 acres of the land to the plaintiff. He further stated that the grant clearly indicated how the land was to be shared out. And that his brothers frustrated the surveyor who had gone to sub divide the portions as agreed

DW1 however confirmed that he has no problem with the plaintiff getting the 2 acres as it rightfully belongs to her. On cross examination by Counsel for the plaintiff he stated that the plaintiff should get her 2 acres excised from the suit land.

DW2 also gave evidence and stated that she has no problem with the plaintiff getting the 2 acres as they had sold to her.

### **Analysis and Determination**

This is a case where the defendants did not file any defence but were present during the hearing of the case. The court exercised its discretion in the interest of justice and allowed them to give evidence. Both DW 1 and 2 admitted that they sold the land to the plaintiff and the same was confirmed vide the Succession Cause that was filed by the defendants.

DW1 stated that it is some of their brothers who are frustrating the subdivision of the suit land. I noticed in court that there was a man who had come with the 2<sup>nd</sup> defendant who was trying to dissuade her from admitting that the land was sold to the plaintiff.

It is not disputed that the defendants sold 2 acres to the plaintiff as indicated in the confirmed grant. It is also not disputed that the plaintiff has been in occupation of the suit land. What is bringing problems is the subdivision to excise the 2 acres for the plaintiff as the brothers of the defendants chased away the surveyor.

The plaintiff gave evidence and produced documents in support of her case. The defendants also admitted that the plaintiff is entitled to 2 acres of the land. I find that the plaintiff has proved her case to the required standard. I therefore enter judgment for the plaintiff as prayed in the plaint with no orders as to costs because the defendants have saved the courts time and the plaintiff's.

**Dated and delivered at Eldoret this 25<sup>th</sup> day of July, 2018.**

**M.A ODENY**

**JUDGE**

Judgment read in open court in the presence of Miss Gati holding brief for Mr. Wafula for Plaintiff and in the absence of the defendants.

Mr. Koech: Court Assistant