



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 134 OF 2016

LINGAKWANG LORKINO.....PLAINTIFF

VERSUS

LORIAM LORKINO.....DEFENDANT

JUDGMENT

The Plaintiff's Claim

1. In the plaint dated 2/9/2016, the Plaintiff prays for judgement against the Defendant for:

- (a) A declaration that the Defendant holds half of the suit Land title number West Pokot/Chapararia /83 in trust for the Plaintiff.**
- (b) An order compelling the Defendant to transfer to the defendant (sic) half of the suit of the land.**
- (c) In the alternative the Plaintiff prays for an order to compel the Defendant to purchase 3 acres of land for the Plaintiff as per the agreement dated 2/2/2016.**
- (d) Costs of the suit.**

2. It is the plaintiff's case that he and the defendant are brothers; that their father died in **1961**; that before his demise he had divided his land measuring **20 acres** equally between his four sons; that during the adjudication process while the plaintiff was away seeking pastures and while he had no identity card, the defendant who had an identity card then was allowed by the elders and his brothers to register his portion and the plaintiff's portion using his identity card and to hold the said land for himself and in trust for the plaintiff. However the defendant failed to indicate that he held the plaintiff's portion in trust for the plaintiff and the title was issued in his sole name over the combined parcels and given the number **West Pokot /Chepareria /83**. He has since declined to allow the plaintiff to use his portion.

3. When the matter was referred to a council of elders on **11/9/2015** they found for the plaintiff in respect of half of the land now registered in the name of the defendant. However the defendant and the plaintiff subsequently entered into an agreement to the effect that the defendant would seek **3 acres** elsewhere within Chepareria or any place of the plaintiff's choice within one month of the agreement and give it to the plaintiff in lieu of giving him his rightful share in the land registered in his name. The one month period expired and the defendant did not fulfil his part of the agreement and he became hostile to the plaintiff, hence the suit.

The Defendant's Defence

4. The defendant filed his defence on **17/10/2016** denying that the suit land formerly belonged to their late father or that it was ever family land and that the plaintiff was given land by their father but he sold it and moved away. It is further the defendant's claim that he agreed to help the plaintiff acquire some land on humanitarian grounds and to avert a family conflict after the plaintiff claimed the defendant's land. He denied that he ever admitted owing land to the plaintiff. The defendant points at what he considers to be an inconsistency in the plaintiff's claim, saying that he originally claimed **3 ha**. Then claimed **5 acres** before the elders while in this court he is claiming **half** of all the land held by the defendant. He also expresses his doubts that the panel of elders that decided the dispute was legally constituted.

5. The defendant was served with the hearing notice showing that the suit would be heard on **1/11/2017**. However, on that date neither the defendant nor his representative appeared. The plaintiff testified and called one witness.

6. The plaintiff adopted his statement filed in court on **5/9/2016** and on **26/7/18**. He reiterated more of the matters set out in the plaint. He stated that his mother divided the land into two amongst his two brothers. He stated that the defendant admitted his claim when their mother was still alive and denied it and chased him away after she died. He produced a resolution by elders as **P. Exh 2**. Its contents reflect the

defendant's agreement to purchase land for the plaintiff's needs elsewhere instead of sharing with him the land he is currently occupying. He also produced as **P. Exh 3** a copy of the agreement which had the same condition. He further produced a demand letter and a reminder addressed to the defendant on his behalf by Teti & Co. Advocates over the issue. He finally produced a copy of a response to those letters dated **13/6/2016** from Esther Chege & Co. Advocates writing on behalf of the defendant. The latter letter reiterates the matters contained in the defence.

7. **PW 2 Samuel Lorkino**, the parties' brother adopted his filed statement and further testified that though parcel number **83** is registered in the defendant's name, that it is supposed to be shared between the plaintiff and the defendant. On his part he indicated that he shared his land with his brother **Rochar Lorkino**. According to him the entire land originally belonged to their father who died before land adjudication. In contrast to the plaintiff's version, his is that their mother had the land divided into two portions. **Parcel Number 82** belonged to his mother while **Parcel Number 83** belonged to both the plaintiff and the defendant. By the time of subdivision, the plaintiff had migrated with his cattle to another place. The witness stated that he did not also have an identity card at the time as it had gotten burnt in a fire that burnt a house. For that reason the defendant was entrusted with the land. The witness stated that there was a case that was heard at the Chief's office before a panel of elders and that subsequently the plaintiff and the defendant wrote an agreement. The witness stated that he was present at the making of the agreement. He identified **P. Exh 3** as a copy of the agreement. He stated that he also signed the agreement.

8. As stated before, the defendant never appeared in court to give evidence in support of his defence.

9. I have considered the plaintiff's evidence. There is evidence, both oral and documentary, that the plaintiff's claim has been addressed elsewhere before a panel of elders. The defendant's defence acknowledges this though it seems to suggest that the panel of elders had no legal authority and therefore their decision was not binding on any of the parties. The evidence of Samuel Lorkino, a brother to the parties, that he shared his land with his brother demonstrates that it is true that their mother caused the land left to the family by the deceased patriarch to be divided into two parcels, each of which was to be owned in equal shares between the brothers to whom it was given.

10. I also find it not plausible that the defendant would agree to execute an agreement that he would find land for the plaintiff elsewhere unless he had first admitted that he held the land he was occupying in trust for himself and for the plaintiff. The panel of elders also found that the plaintiff was entitled to land. Besides, the defendant has not stated in his defence how he acquired the land. He merely denies that the land was originally family land and pleads that the cause of action arose in 1994 and adjudication was done **42 years** ago. This is an intimation at limitation. However he appears to have forgotten that there were proceedings before the elders and his written acknowledgement of the plaintiff that dates back to **2016**.

11. I therefore find that the plaintiff has proved his claim against the defendant on a balance of probabilities. Evidence produced in court has shown the defendant holds half of the land in trust for the plaintiff. I therefore enter judgment for the plaintiff in favour of the defendant. I also order that the trust is hereby determined and that the land comprised in Land **Title Number West Pokot /Chepareria /83** shall be subdivided by the defendant into two equal parcels one of which shall be transferred to the plaintiff herein. In default of subdivision by the defendant, the Deputy Registrar of this court shall execute all necessary documents to effect such subdivision and transfer to enable the plaintiff become the registered owner of half of the land comprised in **Land Title Number West Pokot/Chepareria /83**.

12. The defendant shall bear the costs of this suit.

Dated, signed and delivered at Kitale on this 24th day of September, 2018.

MWANGI NJOROGE

JUDGE

24/9/2018

Coram: Before Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga holding brief for Kiarie for the plaintiff

Defendant in person absent

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

24/9/2018