



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 44 OF 2011

JANE CHERUTICH MASWAI.....PLAINTIFF

VERSUS

SAMUEL KIPLAGAT MISOI.....DEFENDANT

JUDGMENT

1. In her plaint dated **19th April, 2011** and filed on the **20th April, 2011** the plaintiff seeks the following prayers:-

(a) A declaration that Plot No. 89 and being part of LR. No. 6614/8 solely belong to the plaintiff and a permanent injunction restraining the defendant from interfering with the plaintiff's user of the said plot.

(b) Costs.

(c) Interest.

(d) Any other relief that this court may deems fit to grant.

2. According to the plaint the plaintiff's case is that Land Reference No. **6614/8** commonly known as **Tulon Farm**, and situated in Cherangani, within Trans-Nzoia County was purchased using money raised by many people, but the same was registered in the name of one **Samuel Kipkoskei Maritim**. Among those who raised the money to purchase the farm was **Cherwon Kipkatam**, the plaintiff's father and **Rosa Jepkemboi Misoi**, the defendant's mother, and who at all material times have been living and continues to live in Tulon Farm.

3. The plaintiff states that on the **10/3/1994**, the Cherangani Land Control Board consented to the subdivision of **LR. No. 6614/8 Tulon Farm** into **34** portions.

4. Pursuant to the consent to subdivide **LR. No. 6614/8**, the same was with the consent of the members subdivided into **89** plots by reason of some members sharing their land among their children, and having such children own such plots, or by reason of some members subdividing their parcels into several plots that still remained in the names of such members.

5. A map reflecting the subdivision of **LR. No. 6614/8** into **89** plots was drawn, and an area list compiled, and a survey registration list reflecting the plot of every member perfected, and the members are settled in accordance to the said map and area list.

6. It is the plaintiff's contention that the title deeds have not yet been issued as the original title is still held by the Agricultural Finance Corporation and the court in **Kitale HCCC No. 4 of 2000 (Samuel K. Maritim -vs- AFC & 3 Others)** has ordered the AFC to deposit the said title in Court but which hasn't been done yet.

7. The plaintiff further states that according to the area list, the survey registration list and the map, the plaintiff is the owner of **Plot No. 89**, while the defendant is the owner of **Plot No. 34**.

8. In that defence the defendant denies the plaintiff's claim and prays that the plaintiff's suit be dismissed with costs. The defendant states that the plaintiff has no locus standi to institute the suit.

9. On the **31st July, 2018** when the suit came up for hearing the defendant did not appear. His counsel confirmed that he had informed the defendant of the hearing date. Nevertheless the hearing of the suit took place on the **31st July, 2018** when the plaintiff testified. She reiterated the matters contained in the plaint. She produced a copy of the area list that showed that plot number 89 was her plot. She produced a map

showing all the plots in the subdivided farm. The map shows that plots **number 89** and **number 34** are far apart from each other. She also produced a copy of her title deed to plot number **Cherangani/Nzoia Block 5(Tulon)/89**. It shows that the plaintiff is the owner thereof.

10. I find that the plaintiff has established her case against the defendant on a balance of probabilities and I enter judgment in her favour against the defendant.

11. I therefore declare that the plaintiff is the sole proprietor of all that land comprised in **Cherangani/Nzoia Block 5(Tulon)/89**. I also issue an order of permanent injunction restraining the defendant from interfering in any manner whatsoever with the plaintiff's user of the suit land comprised in **Cherangani/Nzoia Block 5(Tulon)/89**.

Dated, signed and delivered at Kitale on this 18th day of September, 2018.

MWANGI NJOROGE

JUDGE

18/9/2018

Coram: Before Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Kiarie for plaintiff

N/A for the defendant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

18/9/2018