



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MAKUENI

ELC 47 OF 2017

JULIUS WATHOME KYULE.....PLAINTIFF

VERSUS

JOSEPH KIMATHI KYULE.....DEFENDANT

JUDGMENT

1) This suit commenced by way of a plaint dated 24/3/2017 and filed in court on the 31st March, 2017. The Plaintiff and the Defendant are step brothers. The Plaintiff has averred in paragraphs 3 and 4 of his plaint that he and his siblings reside in plot number Kinyambu/2481 while the Defendant and his siblings reside in plot number Kinyambu 2468. That the Defendant laid claim on Standard Gauge Railways award meant exclusively for the Plaintiff and his siblings.

2) In his plaint, the Plaintiff prays for judgment against the Defendant;

- a) A declaration that the Defendant is not entitled to Standard Gauge Railways award to plot number Kinyambu/2481.**
- b) That the award be paid to Julius Wathome Kyule's account Number 1144054680 Kenya Commercial Bank Kibwezi.**
- c) The Defendant to pay the costs of this suit with interest at court rates.**
- d) Any other relief the honourable court will deem fit and expedient to grant.**

3) The matter proceeded as undefended suit after the Defendant who had been served with summons to enter appearance and to file his Defence failed to do so. During the hearing, the Plaintiff adopted his statement that he recorded on 23rd March, 2016 as his evidence. He also produced his list of documents dated 24th March, 2017 as PEX No. 1 to 5 respectively.

4) The Plaintiff's evidence is that he is the first born in a family of 13 children. That his father settled his first wife who is also his mother in land parcel number Kinyambu/2481. That when he married his second wife who is also the mother of the Defendant herein, he settled her briefly in the aforementioned parcel of land before moving her to land parcel Kinyambu/2468.

5) That the two parcels of land were registered in the names of his father's two wives. That during the construction of Standard Gauge Railways their family land fell in the path of the railway line and automatically, the family had to be compensated for the lost land. That the Defendant tampered with the land records by adding his name and that of his mother so that the record now reads "Meki Ngilu Kyule Kasuni and Joseph Kimanthi Kyule" instead of "Meki Ngilu Kyule Kasuni." The Plaintiff added that as a result of the confusion, they are yet to be paid. He pointed out that they have tried to resolve the dispute through the chief and the elders but the Defendant has been adamant.

6) The Plaintiff's counsel in his submissions urged the court to rule in favour of the Plaintiff. Having read the evidence on record as well as the submissions filed, I am satisfied that the Plaintiff has a cause of action against the Defendant. In the circumstance, I hereby proceed to enter judgement for him and against the Defendant in terms of prayer (a), (b) and (c) of the Plaint.

SIGNED, DATED and DELIVERED at MAKUENI this 3RD day of DECEMBER, 2018

MBOGO C.G,

JUDGE

IN THE PRESENCE OF:

Mr. Kilonzo holding brief for Mr. Mochere for the Plaintiff present

Kwemboi Court Assistant

MBOGO C.G, JUDGE

3/12/2018