



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 50 OF 2013

AGGREY LIYOSI KIKAYA

**VIOLET MURENGEKA GARASH (Suing as the representatives of
the Estate of the late HESBON KIKAYA AMBOGA.....APPLICANTS**

VERSUS

ERNEST BOCHETE.....1ST DEFENDANT

SIMON WAMBOMBA.....2ND DEFENDANT

KUNGUNI WAINDABA.....3RD DEFENDANT

MICHAEL ONACHO.....4TH DEFENDANT

ABEGAEL MUHONJA.....5TH DEFENDANT

ELIAKIM KIBISU.....6TH DEFENDANT

HENRY KIKAYA.....7TH DEFENDANT

JUDGMENT

The plaintiffs are the legal representative of the Estate of Hesbon Kikaya Amboga who has sued the defendants claiming that the deceased passed away on 20th December, 2001 leaving behind 7 dependents among them the plaintiffs. He also left behind a vast estate among them is the Plot No. Kakamega/Chekalini/577 measuring 8 acres. That the 8th defendant is also one of the beneficiaries of the estate of the deceased.

The plaintiffs claim that when confirmation of the grant was done, it was agreed that Plot No. Kakamega/Chekalini/577 measuring 8 acres be divided into 2 acres each to the sons of the deceased. That the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th defendants entered and occupied part of the suit land without the knowledge of the plaintiffs and upon interrogation they said that they bought the land from the 8th defendant. That after confirmation, the beneficiaries have never sat as a family and caused the land to be surveyed so as to allocate each beneficiary his respective piece of land.

The plaintiff's claim against the defendants is for eviction and permanent injunction because the defendants are occupying the land illegally as the transaction leading to their acquisition was itself illegal.

That the plaintiffs rely on the maxim "*Caveat emptor*". Lastly, the plaintiffs pray for costs of this suit and interest at court rates.

PW1, Aggrey Kikaya testified that he is based in Mombasa doing business. He knows Violet Murengeka Garash. He has sued eight defendants. He knows Earnest Bochette. He knows Simon Wambomba. He knows Kunguni Waindaba and he does not know Michael Onacho very well. He knows Abegael Muhonja and also knows Eliakim Kibisu and Henry Kikaya. The parcel of land is known as Kakamega/Chekalini/577. The land belongs to his late father, Hesbon Kikaya Amboga who passed away in 2002. He produced the land Certificate for title No. Kakamega/Chekalini/577. He produced the letters of administration issued on 12.6.2003 as evidence that the administrators of the Estate of deceased are himself and Violet Murengeka Garash. He produced the Certificate of Confirmation as PEx.3. He has authority to give evidence on behalf of his sister. He produced a letter from Violet Murengeka Garash as PEx.4. He has sued the 8 defendants because they are illegally on the shamba. He went to the shamba in 2009 and found the people on the land. They are not members of their family. Henry Kikaya is their youngest brother.

According to the schedule of property, all of them were to get 2 acres each. The 8th defendant is supposed to get 2 acres. They have not distributed the estate because of intruders. The 8th defendant is not an intruder as he is their brother. He prays for the reliefs sought in the plaint with costs.

I have considered the evidence on record and do find that the suit parcel is registered in the names of Hesbon Amboga Kikaya (deceased). The legal representative of the Estate of the deceased are the plaintiffs. Section 71 of the Law of Succession Act provides that there should be no intermeddling with the Estate of a deceased person. I do find that the plaintiff has proved his case on balance of probabilities that the defendants are intermeddling with the deceased's property and therefore, do grant prayers that the defendants be evicted from Plot No. Kakamega/Chekalini/577 measuring 8 acres. Moreover, I do grant a Permanent injunction against the defendants, their agents or servants from entering Plot No. Kakamega/Chekalini/577. Costs of this suit and interest at court rates are awarded to the plaintiff. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 22ND DAY OF MARCH, 2017.

A. OMBWAYO

JUDGE