



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 90 OF 2015

GRACE AHETE PARAPARA.....PLAINTIFF

VERSUS

JACOB BARASA PARAPARA..... 1ST DEFENDANT

NATHAN WANJALA PARAPARA.....2NDDEFENDANT

TOM PARAPARA.....3RDDEFENDANT

J U D G M E N T

1. The plaintiff commenced this suit by way of a plaint dated **18/6/2015** in that plaint she claimed that she is one of the Administrators of the Estate of the late Parapara Zairi alongside Jacob Barasa Parapara, that she was awarded 4 acres out of the 37 acres estate of the deceased Parapara Zairi upon Succession Proceedings being concluded; that survey has been conducted and each party's share identified/demarcated but the defendants have ganged up to deny the plaintiff used and right to enjoy and quietly possess her entitlement.

2. The plaintiff says she has been forced to leave her land bare and unutilized. Further the 1st defendant, who is the plaintiff's co-administrator to the deceased's estate has frustrated the plaintiff efforts to have the plaintiff's share transferred to her name. The plaintiff therefore seeks an order of permanent injunction to restrain the defendant from trespassing onto or interfering with the plaintiff's or her agent's peaceful and quiet use and enjoyment of the 4 acres demarcated out of all that parcel of land known as **Kipsaina/Kipsoen Scheme Plot No. 37**.

3. She also prays that the 1st defendant be compelled to execute all transfer instruments and to cooperate with the plaintiff to have her share transferred into her name and in default the court to authorize the Deputy Registrar of the Court to execute all relevant transfer forms. She also seeks costs of the suit.

4. bThe three defendants were all served, and an Affidavit of Service sworn by one George Mumali on **8/2/2016** was filed in court as evidence of service. They however failed to file any memorandum of appearance or defence. The hearing proceeded *ex-parte* on 27/7/2017 when the plaintiff alone gave evidence.

5. The plaintiff testified that Parapara Zairi was her husband, that he passed on in the year 2015, that the defendants are the children of other wives of the deceased that she only child is a daughter, that she is the second wife, that the deceased had shared out his property among his wives, that all family members were in consensus that the property of the deceased should be shared out as per the deceased wishes, that when her husband passed on, a government surveyor came to survey the land that the family members signed

an agreement which she produced **PExh3**. The document which shows the distribution of the land in terms of acreage after the survey was produced as **PExh4**. Consequently she decided to sell the land after the defendants troubled her. However the land has not been transferred to the buyer; it has not even been transferred to the plaintiff's name.

6. The plaintiff also produced the grant of Letters of Administration and the Confirmation of Grant, they relate to her deceased husband and his property. **P.Exh1** is the Certificate of Confirmation of Grant. It shows that a person known as Grace Ayode Parapara was allocated 4 acres to be registered and transferred into her name "to hold in trust for the family members of the 2nd house". Since the plaintiff has already testified that she was the 2nd wife to the deceased, it is only proper to conclude that this was her allocation notwithstanding the different name used.

7. As seen from **PExh2**, the application for letter of administration in the names of Jacob Parapara and Grace A. Parapara (the plaintiff) had been consented to by the family of the deceased. **P Exh2** is the consent which they executed.

8. **PExh4** is a list showing how the land from the deceased's estate would be shared out. The plaintiff is listed as No.2 on that list.

9. As I indicated earlier this suit is unopposed. I find that the plaintiff has proved her claim on a balance of probabilities. I enter judgement for the plaintiff against the defendants in terms of prayers **(a)** **(b)** and **(c)** of the plaint.

It is so ordered.

Dated, signed and delivered at Kitale on this **24th** day of **August, 2017**.

MWANGI NJOROGE

JUDGE

24/8/2017

Before - Mwangi Njoroge Judge

Court Assistant – Isabellah/Picoty

N/A for both parties

Judgment read in open court in the absence of both parties who had been notified.

MWANGI NJOROGE

JUDGE

24/8/2017