

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

E & L CASE NO. 196 OF 2016

KIPLAGAT CHELELGO.....PLAINTIFF

VERSUS

ALFRED CHEBII CHEPKEITANY.....DEFENDANT

JUDGMENT

The plaintiff has come to court under Order 37, Rule 1(a) of the Civil Procedure Rules, 2010 claiming to be a beneficiary of a trust under which the defendant held part of land parcel No. Baringo/Kewamoi B/29. The plaintiff seeks the following question for determination:

- 1. Whether a declaration should be made against the defendant that he has been a mere trustee holding a portion of the land title known as Baringo/Kewamoi B/29 for and on behalf of the plaintiff and whether the defendant has any proprietary rights over the portion of 5 acres occupied by the plaintiff.***
- 2. Whether the trust should be terminated and consequently whether the plaintiff should be registered as the owner of that portion of five acres currently in his possession.***
- 3. Whether the defendant, his family servants and/or agents should henceforth be inhibited from dealing with that portion No. Baringo/Kewamoi B/29 in the plaintiff's use and occupation.***
- 4. Whether the defendant should bear the costs of this suit?***

The application is based on the affidavit of Kiplagat Chelelgo who states that the Defendant herein is a distant cousin and his neighbor and that sometimes in 1974, during the land adjudication and demarcation at Baringo/Kewamoi B section, Kapkut area, he demarcated and registered his parcel in his name. That the Defendant who has a small parcel of land sharing a common boundary with his parcel also did the same. That later, the adjudication officer informed them that the demarcation maps for the area had been destroyed and/or were spoiled and that the whole exercise was to be repeated. The repeat exercise was done in his absence as he had traveled out of the District and his cousin, the Defendant herein demarcated the two parcels and registered them as one under his name as parcel NO. BARINGO/KEWAMOI B/29.

That upon his return from the said journey, the Defendant informed him that he had registered the two parcels under his name and that he would transfer his portion any time as and when he wanted it. Since he was in occupation of his parcel and the boundary between the two parcels was well marked, he had no reason to doubt him that he would not transfer his portion to him when asked him to do so. When the title deed came out, he asked him to transfer his portion which he agreed in principle, but kept dilly dallying and postponing the date of the transfer as the years passed by.

That on two occasions the latest one being on 7th day of May, 2010, the Defendant agreed to accompany him to the District Land Control Board for consent for subdivision and did sign the consent application forms only for him to renege at the last minute during the land control Board meeting stating, that he needed to sort out one issue or another.

That in fact in one of the Land Control Board meetings, the Defendant did inform the Board that he had no objection transferring his 5 acres to him only that he needed time to consult his son. That he has taken him before the District administration, and he has severally agreed before them that his 5 acres are registered under his name and assured them that he would transfer the same to him, only for him to change his mind thereafter

That the Defendant has since invited other busy bodies to the suit land who are positioning themselves to dispossess him of his land under the pretext that they are related to the Defendant. That he had always believed and trusted that the Defendant would transfer his portion to him when called upon to do so, but he has now realized that the Defendant had other ulterior motives when registering his parcel under his name.

He inherited his said parcel of land from his late father Chelelgo Chepyegon and has been in occupation and tilling it for the last 56 years. That the truth of the matter is that the Defendant knew and knows that he is entitled to 5 acres he is currently in occupation from parcel NO. BARINGO/KAWAMOI B/29. The Defendant knew or ought to have known that he was holding a portion of parcel NO. BARINGO/KEWAMOI 13/29 in trust for him.

That it is now just that the Honourable court declares that the Defendant has been holding the said 5 acres on his behalf. That further, it is now the appropriate time that the aforesaid trust be terminated and the 5 acres under his occupation be taken over by himself and registered in his name. That he has on several occasions approached the Defendant as earlier stated with a view to having him relinquish title to his portion under his occupation and though agreeable in principle he has created side shows at the last minute.

When the matter came up for hearing, the plaintiff produced the certificate of official search, the application for the consent of the Land Control Board, a letter from the chief and his father's Identity card.

I am satisfied that the plaintiff has proved on a balance of probabilities the existence of a trust and that the defendant holds a portion of the property in dispute as a trustee and I do hereby issue a declaration against the defendant that he has been a mere trustee holding a portion of the land title known as Baringo/Kewamoi B/29 for and on behalf of the plaintiff and the defendant has proprietary rights over the portion of 5 acres occupied by the plaintiff and that the trust should be terminated and consequently the plaintiff should forthwith be registered as the owner of that portion of five acres currently in his possession. The defendant, his family servants and/or agents are hereby henceforth inhibited from dealing with that portion No. Baringo/Kewamoi B/29 in the plaintiff's use and occupation. The defendant should bear the costs of this suit.

Orders accordingly.

Dated and delivered at Eldoret this 24th day of November, 2017.

A. OMBWAYO

JUDGE