



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KERICHO**

**ELC CASE NO. 113 of 2015**

**MARY CHELAGAT MAINA.....PLAINTIFF**

**VERSUS**

**EVALINE CHEPCHIRCHIR KORIR.....DEFENDANT**

**JUDGMENT**

**Introduction**

1. By a Plaint dated 6<sup>th</sup> December 2011, the Plaintiff instituted the suit herein against the defendant who is her sister in law. The plaintiff's claim against the defendant is that the defendant who is the registered proprietor of land parcel number KERICHO/KIPCHIMCHIM/453 is holding the said parcel of land in trust for the Plaintiff and other family members and that the plaintiff is entitled to two acres thereof.
2. In her Defence filed on 2<sup>nd</sup> October 2013, the defendant denies that the plaintiff is among the persons for whom she holds the suit property in trust. The defendant further states that there have been several other suits between the plaintiff and the defendant.

**Plaintiff's Case**

3. When the suit came up for hearing the plaintiff testified and called two witnesses. The Plaintiff testified that the defendant was married to her late brother Samuel Kipkemboi Korir. She testified that the suit property is registered in the name of the defendant. She stated that the suit property initially belonged to her late mother and it was subsequently registered in the name of her late brother Joseph Kiptoo Korir on behalf of the family during the lifetime of her parents.
4. She testified that before her mother died in 1992, she had called elders and informed them that incase she died, the plaintiff should be given a share of the suit property while the remaining portion should be given to the plaintiff's bother Samuel.
5. She later learnt that the land had been registered in the name of Samuel Kipkemoi Korir. When Samuel died, his widow obtained a Grant of letters of administration and had the land registered in her name.
6. She testified that she is a single mother and she is claiming a share of the land as it belonged to her late mother. She stated that she had constructed a temporary house on the suit property where she lived for about five months but she left after being threatened by her nephews and her house was later destroyed.
7. She produced a copy of the certificate of official search in respect of the suit property, minutes of the

Ainamoi Land Disputes Tribunal proceedings and a copy of the court order in Kericho Miscellaneous Civil Application No. 11 of 2010 adopting the decision of the Tribunal as exhibits P1,2 and 3 respectively.

8. In cross-examination she stated that the suit property was registered in the name of the defendant in trust for Caroline Chemutai, Maurine Chepkurui, Bethwel Kiplangat and 3 others.

9. She admitted that she filed other cases in respect of the suit property including one at the Land Disputes Tribunal where she was claiming a share of the suit property.

10. She stated that her family had a house in Majengo within Kericho town but they sold it in order to cater for Samuel's medical expenses.

11. PW2 Kipsiele Arap Chumo testified that he was a retired assistant chief. He testified that in 1982 the plaintiff's late mother had called him to witness the division of her land to her three children in the presence of other witnesses. He testified that it was agreed that the plaintiff be given 2 acres while 10 acres were to be given to Samuel.

12. According to his testimony, Joseph Kiptoo declined to take a portion of land from his mother as he had been given another parcel of land which he had charged to the bank. He testified that he was later called by the plaintiff who complained that she had not been given her share of 2 acres. In cross-examination, he said he did not have minutes of the meetings he held relating to the suit property.

13. PW3 Kipsang Arap Soi who is an elderly neighbour of the parties herein testified he knew the plaintiff's parents as he had lived in the same village since the 1950s. He testified that the suit property initially belonged to the plaintiff's late mother and was to be divided among her three children including the plaintiff. He later learnt that Joseph Kiptoo was claiming the entire parcel.

### **The Defendant's case**

14. The Defendant testified that the suit property was registered jointly in her name and that of her late husband Samuel Kipkemboi (Korir) Maina in trust for their children Caroline, Maurine, Bethuel Kiplangat, Moses Korir, Betty Chepngetich and Mercy Chelagat. She refuted the plaintiff's claim that she obtained the land fraudulently. She testified that she had been living on the land even before her late brother in law Joseph Kiptoo died. She stated that the Plaintiff had filed numerous cases in respect of the suit property.

15. In cross-examination she clarified that the land initially belonged to the late Joseph Kiptoo but was subsequently transferred to her late husband Samuel Kipkemboi Maina and her herself. This was done after her sister-in-law Grace Kiptoo (Joseph Kiptoo's widow) obtained letters of administration in respect of the estate of the late Joseph Kiptoo. She stated that her sister in law Grace Kiptoo had another parcel of land where she lives with her children. The Defendant did not call any witnesses.

16. After the close of the defendant's case each of the parties filed their submissions in which they summarized the evidence and stated their respective positions.

### **Analysis and Determination**

17. The following issues emerge for determination;

- i. Did the defendant fraudulently register herself as the proprietor of land parcel number KERICHO/KIPCHIMCHIM/453?
- ii. Does the defendant have any beneficial interest in the suit property?
- iii. Is the plaintiff entitled to the reliefs sought?

iv. Who should bear the costs of this suit?

18. In her Pleint the plaintiff alleges that defendant registered herself as the proprietor of the suit land through fraud. Among the particulars of fraud, she states that the plaintiff registered herself without disclosing the plaintiff's interest and causing the resultant parcels to be transferred to herself.

19. The courts have repeatedly held that allegations of fraud must be strictly proved. In the case of **Koinange & 13 Others V. Charles Karuga Koinange 1986 KLR** at page 23 Justice Amin citing the case of **Ratilal Patel Makanji (1957) EA 314** observed as follows:

***“When fraud is alleged by the plaintiffs, the onus is on the plaintiffs to discharge the burden of proof.....Allegations of fraud must be strictly proved. Although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a balance of probabilities is required”***

20. In the instant case no evidence was adduced by the plaintiff to demonstrate thDiat the defendant fraudulently registered herself as the proprietor of the suit property.

21. From the evidence on record, it is clear that the suit property was first registered in the name of Joseph Kiptoo way back in 1971 during the lifetime of the plaintiff's mother. There is nothing to show that he was to hold it in trust for the plaintiff and other family members. If it is true that the plaintiff's mother intended that she be given a portion of the said parcel of land, nothing would have stopped her from making provision for this on the title.

22. Following the death of Joseph Kiptoo, the suit property was transferred to Samuel Kipkemoi Maina and the Defendant as trustees for their children named in the title. It is therefore my finding that the particulars of fraud have not been proved.

23. Regarding the second issue as to whether the plaintiff has a beneficial interest in the suit property, there is nothing to show that the land was ever registered in the name of the Plaintiff's late mother as alleged. The entries in the green card show that the first registered owner was the plaintiff's bother, Joseph Kiptoo. Even though the plaintiff called witnesses to testify that the land belonged to the plaintiff's mother and that she intended to give a portion of the same to the plaintiff, this is not borne out by documentary evidence.

24. It is not lost to me that the plaintiff has made various unsuccessful attempts to claim an interest in the suit property through various court cases. However, it is interesting to note she filed no objection in Kericho HC Succession Cause No.27 of 2004 where the Court confirmed the grant in respect of the estate of Joseph Kiptoo Maina in the names of Grace Kipngetich Korir and ordered that land parcel number KERICHO/KIPCHIMCHIM/453 be registered in the joint names of Samuel Korir and Rebecca Korir.

## **Conclusion**

25. The upshot is that the plaintiff has failed to prove her case on a balance of probabilities. Consequently, her case is dismissed. Considering that this is a case involving family members, I direct that each party bears their own costs.

**Dated, signed and delivered this 24<sup>th</sup> day of November 2017**

**J.M ONYANGO**

**JUDGE**

In the presence of:

Miss Chelimo for the Plaintiff

Mr Motanya for Siele for the Defendant

Court assistant Rotich