



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC CASE NO.58 OF 2017

MARTIN NGAIRA LIYOKHO.....PLAINTIFF

VERSUS

CHARLES LIYOKHO1ST DEFENDANT

LAND REGISTRAR VIHIGA.....2ND DEFENDANT

RULING

1. Martin Ngaira Liyokho, the Plaintiff, commenced this suit against **Charles Liyokho** and **Land Registrar Vihiga County**, the Defendants, vide the plaint dated 2nd February 2017 seeking for two declaratory orders, permanent injunction over land parcel **East Bunyore/Ebusamia/60** and costs.

2. Charles Liyokho, the 1st Defendant, filed a notice of preliminary objection dated 7th February 2017 raising the issues that the

Plaintiff has no locus standi to bring this suit against the Defendant and prays that the suit be dismissed with costs for the following reasons;

- a. Article 2 (4), Article 40 and 64 (a) of the Constitution.
- b. The Defendant is the registered owner of the suit land.
- c. The Defendant is alive.

The Plaintiff opposes the preliminary objection through the grounds of opposition dated 7th March 2017 summarized as follows:

- a. That the preliminary objection is not based on law but controversial facts to be ascertained at the hearing.
- b. That the suit land is ancestral land held in trust by the 1st Defendant and that the Plaintiff as a member of the family has beneficial and occupational rights over it.
- c. That the 1st Defendant, having distributed the land to his family members, has become functus officio.
- d. That the Plaintiff suit seeks to enforce the Plaintiff's beneficial and occupational rights over the

suit land on which he has lived for long.

3. That when Mr. Mwamu and Matete for the Plaintiff and 1st Defendant respectively, appeared before the court on the 9th March 2017, directions on filing of written submissions were given. The counsel for the 1st Defendant filed their submissions dated 12th June 2017 while counsel for the Plaintiff had filed theirs dated 2nd May 2017.

4. The following are the issues for the determination by the court;

a. Whether the Plaintiff has locus standi to bring this suit against the 1st Defendant.

b. Who pays the costs of the preliminary objection.

5. The court carefully considered the grounds on the preliminary objection, grounds of opposition, submissions by counsel and come to the following determinations;

a. That while bearing in mind that the court should not make conclusive determinations on facts and law at the interlocutory stage, it is nevertheless clear from the pleadings that the Plaintiff has filed this suit against the 1st Defendant on the basis of being his son. That orders that he seeks are primarily aimed at stopping the 1st Defendant from redistributing land parcel East Bonyare/Ebusamia/60 afresh for reasons that it would interfere with the portions of the land the Plaintiff and his brothers have already been given.

b. That whether or not the Plaintiff succeeds in his claim will depend on the law and the strength of the evidence to be adduced during the hearing. That the fact that the 1st Defendant is alive and is the registered proprietor of the suit land does not mean that he cannot be sued by his son, the Plaintiff. That if anything, the suit affords the 1st Defendant with the opportunity, outside the family setting, to make his case on the redistribution of the suit land so as to provide for his daughters. That it is important to note that **Articles 27 and 60 of the Constitution** forbids discrimination on the basis of sex among others.

c. That the 1st Defendant preliminary objection has no merit .

6. That having come to the foregoing determinations the court find that the 1st Defendant's preliminary objection to be without merit and is hereby rejected and dismissed with each party bearing his own costs.

Orders Accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 15TH DAY OF NOVEMBER 2017

In presence of;

Plaintiff Present

Defendants Absent

Counsel Mr. Gachuba for Mwamu for Plaintiff

Mr Kowinoh for Matete for Defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

15/11/2015

15/11/2017

S.M. Kibunja Judge

Oyugi court assistant

Plaintiff present

Mr. Kowinoh for Matete for Defendant

Mr. Gachuba for Mwamu for the Plaintiff

Court: The ruling dated and signed in open court in presence of the Plaintiff Mr. Gachuba for Mwamu for the Plaintiff and Mr. Kowinoh for Matete for 1st Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

15/11/2015