



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

LAND CASE NO. 476 OF 2014

JAMES WAWERU GIKARU..... PLAINTIFF

VERSUS

LUCY NJERI BILLY..... DEFENDANT

J U D G M E N T

1. The plaintiff commenced this suit by way of a plaint dated **16/4/2014**. In that plaint the plaintiff claimed that: the defendant is his sister; that their father passed on in **1992**; that before demise his father had subdivided his land among his children including the defendant; that the defendant had fraudulently obtained title to the portion she administers, which now includes the one that their father had reserved for himself during his life, and is now selling or has sold the whole parcel to third parties.
2. The plaintiff therefore prays that the title to **Kabete/Kibichiku/1916** be cancelled and the plaintiff be given his rightful share, and that he be awarded the costs of the suit.
3. The defendant filed a statement of defence dated **16th July, 2014** on **24/7/2014**. She averred that the plaint is vague as it does not describe the portion that the parties' father left for himself; that the parcel of land known as **Kabete/Kibichiku/1916** belonged to her and that she acquired her title deed through transmission in **High Court Succession Case No. 919/96**, in which the plaintiff had been made a co-administrator.
4. The defendant pleads that the plaintiff's suit is bad in law and should be struck out. She also disputed the jurisdiction of this court to handle the matter.
5. The issues for determination in this suit are as follows:-

(1) Did all that land known as Kabete/Kibichiku/931 belong to the deceased father of the plaintiff and the defendant?

(2) Did the parties' deceased father subdivide the land among his children and thereafter keep one portion for himself?

(3) Was the portion, if any, that the deceased kept for himself to be divided equally between the plaintiff, the defendant and another brother after the demise of their father?

(4) Did the defendant fraudulently include that portion into her title?

(5) What remedies should issue?

(1) Did all that land known as Kabete/Kibichiku/931 belong to the plaintiff's father?

6. The plaintiff testified at the hearing of this suit on **25/5/2017**. He adopted his statement filed in court on **17/4/2014**. In that statement he avers that before his father died he gave each of his children a portion of land and kept one for himself. He states that the portion retained by his father was to be equally divided among the children. However, he says, the defendant had transferred the whole of their father's portion to herself and amalgamated the same with her parcel to create a single title.

7. The plaintiff does not state the Land Reference Number of the original parcel owned by their father before his deceased father gave some parcels to his children. He does not outline the process by which the defendant obtained title to the portion left in their father's name which would be a prerequisite to proving fraud. He does not even state the Land Reference Number of the parcel retained by his father after subdivision, which the defendant is said to have fraudulently amalgamated with her parcel to obtain one title. The plaintiff's pleadings are an extraordinarily dry piece of work that does not guide the court on the main issues in the case.

8. The defendant's defence correctly states that the plaintiff's pleadings are vague. It is quite clear that in a situation where land was evidently titled as at the date of the sharing out of the land by the plaintiff's father, the particular parcel retained by the plaintiff's father ought to have had a Land Reference Number. It is quite clear that the plaintiff has also kept all documents relating to his parcel as far as possible from this court's scrutiny either by design or by inadvertence. It is also alleged that there are succession proceedings in which the Grant of Letters of Administration in respect of the parties' deceased father has been revoked.

9. In the case of **Choitram Vs Nazari 1984 KLR 327 at 334**, the Court Of Appeal had this to say of pleadings:

“Pleadings should be precise, models of clarity and simplicity of expression. The judge has to understand them in order to understand the case.”

10. This court is unable to find that the plaintiff's pleadings have disclosed any cause of action against the defendant in his pleadings in the state they are in at present. The issues framed above can not be determined when the pleadings are in their current state. The plaintiff's pleadings leave too many empty gaps.

11. Consideration is hereby taken of the defendant's admission that letters of administration to the deceased's estate, by which the defendant may also have obtained title to her land, have been revoked. Nevertheless the court's hands are tied and it may make no other order save an order dismissing the suit since the suit came up for a substantive hearing on its merits and the plaintiff failed to establish his claim.

12. Consequently the plaintiff's suit is hereby dismissed. There shall be no orders as to costs of this suit.

Signed at Kitale on this 4th day of October, 2017

MWANGI NJOROGE

JUDGE

Dated, signed and delivered at Nairobi on this 10th day of November, 2017

K. BOR

JUDGE

Judgement read in open court at Nairobi on this 10th day of November, 2017

In the presence of:

No appearance for the Plaintiff.

Mr. Obuya for the Defendant.

Court Assistant: V. Owuor

K. BOR

JUDGE