



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**  
**E&L CAUSE NO. 121 OF 2016**  
**THOMAS KIPROTICH KIGEN.....PLAINTIFF**  
**VERSUS**  
**JULIUS KIPSANG CHEBET.....1<sup>ST</sup> DEFENDANT**  
**DANIEL KIPRUTO CHEBII.....2<sup>ND</sup> DEFENDANT**  
**KOITOROR FARM LTD.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

By a plaint dated 16<sup>th</sup> May , 2016 the Plaintiff herein sued the Defendants jointly and severally for orders that:

- a. Parcel No. KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174 belongs to the plaintiff and the registration of the 1<sup>st</sup> defendant's name against the title be registered in the name of the plaintiff.
- b. The particulars contained in the 3<sup>rd</sup> defendant's register be rectified by striking out the name of the 2<sup>nd</sup> defendant and the plaintiff's name be inserted on the parcel No. KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174.
- c. An order of injunction do issue barring the 2<sup>nd</sup> defendant or any other person claiming through him from interfering with the plaintiff's right

The Defendants were served with summons to enter appearance but they failed to file any response. The plaintiff filed an affidavit of service dated 30<sup>th</sup> June, 2016. A request for interlocutory Judgment was made and the court directed that the suit be set down for hearing with service to the defendants.

The suit was set down for hearing by way of for formal proof on 22<sup>nd</sup> November, 2017 when the plaintiff testified and called one witness to prove his case. The defendants were served with a hearing notice but failed to attend court.

It was the plaintiff's evidence that he purchased land parcel No. LR.No. 10346 together with other persons which was later subdivided and converted from leasehold to freehold and registered in the names of the members of Koitoror Farm Ltd. It was further his evidence that the suit land that is registered in the name of the 1<sup>st</sup> defendant is supposed to be registered in his name as he stays on the suit land. The plaintiff indicated in his statement which was adopted as his evidence in chief that the Koitoror Company

caused the entire land to be subdivided and his brother Daniel Kipruto who is the 2<sup>nd</sup> defendant was allocated parcel of land No. KOITOROR/TUIYOLUK BLOCK 1(KOIOROR)173 measuring 1.78 hectares but when the title deed was issued to him it showed that the land was measuring 3.56 hectares which was not the position on the ground.

The plaintiff further testified that the 2<sup>nd</sup> defendant took 10 acres instead of 5 acres and that the Land Registrar asked him to appear at the land's registry vide a letter dated 17/2/17 but he did not attend. He produced the said letter as exhibit No. 1. The plaintiff also produced a letter whereby the Registrar rectified the register dated 6/8/15 as exhibit No.2. The plaintiff further produced a copy of the register and a green card abstract as exhibits Nos. 3 & 4 respectively. It was his evidence that the 2<sup>nd</sup> defendant claimed 10 acres thereby encroaching on his suit land. He therefore prayed for judgement to be entered against the defendant as prayed in the plaint.

PW2 Saulo Kebeney testified and supported the plaintiff's case having been a member of Koitoror Farm Ltd. He stated that the defendants were allocated 10 acres each but they were to get 5 acres each He stated that the 1<sup>st</sup> defendant does not live on the suit as it is the plaintiff who stays on the suit land since 1976. That Julius the 1<sup>st</sup> defendant stays on plot No. 190.

Counsel filed written submissions and reiterated the plaintiff's evidence and listed 2 issues for determination by the court.

1. Whether parcel number KOITOROR/TUIYOLUCK BLOCK 1 (KOITOROR)174 belongs to the Plaintiff and ought to be registered as such.
2. Whether Orders of permanent injunction and eviction ought to be issued against the 2<sup>nd</sup> Defendant from claiming or using part of parcel number KOITOROR/TUIYOLUK BLOCK 1 (KOITOROR)174

### **Analysis and determination**

The plaintiff's claim is not controverted by any evidence. He produced documents to support his case and PW2 also corroborated his evidence. In the absence of a rebuttal from the Defendants, I find that the plaintiff has proved his case to the required standard and therefore, his name should be rectified in the members register and further be entered in the title of the said parcel.

Section 80 of the Land Registration Act, 2012 provides that:-

**"Subject to subsection (2) the court may order rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake**

This section is relevant to the present case and gives the court powers to order for rectification of the register. The court invoked the provisos of section 80 to rectify the title in the case of MONIKA HERTA ELFRIECL BEHRMANN VS MUBIA HOLDINGS LIMITED [2017) Counsel also relied on the case of FRANCIS NYAUMA OBARE & 3 OTHERS VS MAINA MARWANGA OMWAMIRE & ANOTHER (2017)eKLR where the court held that the court has powers to order rectification of title or register.

I have considered the pleadings, the evidence on record together with the submissions of Counsel for the plaintiff and I have come to the conclusion that the plaintiff has proved his case against the defendant on a balance of probability.

I hereby enter judgement for the plaintiff against the defendants jointly and severally and make the following orders:

- a. A declaration that Parcel No. KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174 belongs to the plaintiff and the registration of the 1<sup>st</sup> defendant's name be rectified and be registered in the name of the plaintiff.
- d. That the particulars contained in the 3<sup>rd</sup> defendant's register be rectified by striking out the name of the 2<sup>nd</sup> defendant and the plaintiff's name be inserted on the parcel No. KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174.
- e. That an order of injunction is hereby issued barring the 2<sup>nd</sup> defendant or any other person claiming through him from interfering with the plaintiff's right to the suit land.
- f. That the 2<sup>nd</sup> defendant do give the plaintiff vacate possession of the suit land within 30 days upon service of this judgment or decree, in default of so vacating, an order of eviction be issued against the defendant from parcel of land known as KOITOROR/TUIYOLUK BLOCK 1(KOITOROR)174.
- g. Defendants to pay costs of the suit.

**Dated and delivered at Eldoret on this 14<sup>th</sup> day of December, 2017.**

**M.A ODENY**

**JUDGE**

**Read in open court in the presence of:**

Miss Tum for the Plaintiff

Mr. Koech – Court Assistant

Defendants – absent.