



**REPUBLIC OF KENYA**

**IN THE LAND ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 63 OF 2011**

1. JOSEPH. K. MARINDICH
2. PAUL CHESUT CHELAGAT
3. STEPHEN KIMELI TOROITICH:.....PLAINTIFFS
4. WILLIAM KIMELI CHERUIYOT
5. DANIEL KIPKOECH KABUR

v

1. REUBEN YATOR
2. JACKSON LETING
3. STANLEY MOSBEI
4. PETER BOR
5. JOSEPH YEGO
6. ISAIAH CHESARO
7. TOM MUREKA :.....DEFENDANTS
8. WILLIAM CHEBET
9. JONATHAN CHESEREK
10. SIMON KAMAU
11. MUSA KIMUGE
12. MUSA KIPLAGAT
13. AARON CHEMELIL
14. ROSE CHOGE

**JUDGEMENT**

## **INTRODUCTION**

1. The plaintiff's and defendants are all members of a farm called Ex-cullen which is situated near Moi's Bridge in Uasin Gishu County. The farm had 323 members. The farm is comprised of 1140 acres. The members got the 1140 acres as a result of a decree arising from Kakamega High Court Civil case no. 230 of 1989 in which the members had sued Lands Limited.
2. It was agreed that Lands Limited was to transfer the 1140 acres into the names of five individuals who were in turn to transfer the same to individual members according to their entitlement in the farm. The five plaintiffs were elected by the farm members as trustees. Lands Limited then transferred the 1140 acres into the names of the five plaintiffs.

## **PLAINTIFFS CASE**

3. The land in issue was initially registered under the Registration of titles Act(Now repealed). The five plaintiffs through their lawyer embarked on the process of having the registration changed to Registered Land Act (Now repealed). After the conversion of the registration to the RLA, the plaintiffs embarked on the process of subdivision of the farm so that each of the 323 members could have individual titles.
4. The five plaintiffs as trustees attempted to raise the money for subdivision from all the 323 members but this proved impossible as not all members were able to raise money. The plaintiffs then decided to approach a few members who were willing to fund the process. Money was raised and the process of transfer and subdivision of the farm was completed. It was then agreed that the money expended on this process was to be refunded by all the members on prorata basis based on each individual's acres. To ensure that all members paid their share, it was agreed that the Land Registrar Uasin Gishu was not to issue title to members unless each member produced a clearance certificate issued by the leadership of the farm. A letter was done to this effect by the farm's lawyers.
5. All the farm members except the defendants agreed to refund the money incurred by the plaintiff in the subdivision process before they would be given their titles. The fourteen defendants vowed not to pay what was expected of them arguing that they were being exploited. The plaintiffs moved the court for orders that the defendants should not obtain titles from the land Registry at Uasin Gishu district Land Registry until they produce a clearance certificate from the management of the farm after they have cleared the amount owing from them
6. During the pendency of this suit, some of the defendants paid their dues and some have had titles processed in their names after being given clearance.

## **ANALYSIS OF EVIDENCE.**

7. It is important to point out from the beginning that the defendants did not adduce any evidence in this case. The defendants lawyer applied for adjournment on 22.10.2015. The adjournment was rejected on the ground that this matter had been pending in court for long and there was no convincing reason for the adjournment. The lawyer for the defendant walked out of court after refusal of the adjournment saying that he was not going to participate in the trial.
8. The plaintiffs have demonstrated that they spent money in the process of transfer and subdivision of the farm. The five plaintiffs were duly elected as trustees in a meeting held on 8.5.2006 as per the minutes produced as exhibit 1. The members of the farm mandated the five plaintiffs to ensure that those who gave money towards the sub-division process were refunded their money. Copies of cheques and receipts used to pay this amount was produced as exhibit 3. Stamp duty of Kshs.1,342,760/= was paid. The same had been assessed as per the stamp duly assessment sheet produced as exhibit 4. There were other amounts paid towards stamp duty being 4190/= and 16,508/= as per exhibit 6.
9. There was conveyancing fees of Kshs.34000/= as per receipt produced as exhibit 7. Survey fees was agreed at kshs786530 as per the survey fees agreement between the management and a surveyor called Wainaina produced as exhibit 8. After all expenses were tabulated, the five plaintiffs came up with a list of the amount each individual member was to pay. This list was

produced as exhibit 18. The amount due from the defendants is clearly indicated on the list as shown in paragraph 9 of the plaint.

10. There is evidence from the plaintiffs which is not controverted that over 200 members have paid their dues and have had titles processed in their names. Some defendants who initially refused to pay their dues have since changed their hard-line stand and paid their dues. They have had titles issued in their names. These are the first and fifth defendants. The fourteenth defendant cleared her 11,525/= vide two payments made on 5.1.2012 to the plaintiffs lawyers. The third defendant also paid his dues of Kshs.7,015/= to the same lawyers on 11.10.2011.
11. The five plaintiff in their capacity as trustees of the Ex-cullen farm have demonstrated that they incurred money in processing of sub-division of the farm. These amounts were to be refunded based on each individual's acres. The plaintiffs have shown that they prepared a list showing what is due from each member. It will be unfair for some members to get titles for free at the expense of other members who had sacrificed to ensure the process is completed.

**DISPOSITION:**

12. I find that the plaintiffs have proved their case against the defendants on a balance of probabilities. The Plaintiffs are entitled to recover from the defendants the sums pleaded in paragraph 9 of the plaint. I accordingly allow the plaintiffs claim against the defendants in terms of prayer (a) (b) and ( c) of the plaint.

Dated and delivered at Kitale on this 18th day of January,2016.

**E. OBAGA**

**JUDGE**

In the presence of M/S Mafutu for Mr. Kiarie for Plaintiffs. Court Assistant – Isabellah.

**E. OBAGA**

**JUDGE**