

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KERICHO

CIVIL SUIT NO. 44 OF 2013

ELISHA KIPKURUI BII.....PLAINTIFF

VERSUS

PAUL KIPROTICH BII..... DEFENDANT

RULING

(Application to have Deputy Registrar sign mutation and transfer forms; land owned by both plaintiff and defendant; matter settled by consent that land be shared equally; contention on how the land should be shared; proposal by surveyor not acceptable to defendant; order for each party to table their proposed demarcation and court will make decision after input by surveyor.)

This suit was instituted by way of plaint filed on **8 July 2013**. In the plaint, the plaintiff sought orders to have the **land parcel Kericho/Cheborge/52** which land is registered in the joint names of the plaintiff and defendant, subdivided into two equal portions and each party to become registered as individual title holder of his share. In the suit, the plaintiff averred that consent to subdivide had already been obtained from the Land Control Board on **18 April 2012** but that the plaintiff had unreasonably refused to sign the requisite documents to enable the surveyor carry out the subdivision and register the two portions in their respective names. The two parties are brothers and the land was initially owned by the parents of the two parties. They acquired the same by way of transmission.

The defendant filed defence but ultimately , on **23 July 2015**, the parties entered into a consent settling the matter. The following was the consent :-

*"By consent, the Bureti District Surveyor to survey the entire suit **land Kericho/Cheborge/52** and partition the same into two equal parts indicated by the parties and place the beacons on the surveyed land. One part to be owned by the plaintiff and the other part to be owned by the defendant. Each party to bear his own costs."*

An application **dated 23 February 2016**, has now been filed by the plaintiff. In the application, the plaintiff wants orders that the defendant be ordered to execute the application for consent to transfer to the plaintiff the title to a **parcel No. Kericho/Cheborge/1174** and also sign the transfer documents. In default the applicant has asked that the Deputy Registrar of this court do sign the said documents. The application is premised on the reason that the defendant has refused to sign the said documents to complete the consent order and enable the plaintiff acquire title to his portion. In the supporting affidavit, it is averred that the surveyor has already been on the ground and subdivided the land into two portions. One portion, **Kericho/Cheborge/1174** is to be owned by the plaintiff and the other portion, **Kericho/Cheborge/1175** is to be owned by the defendant. The plaintiff has annexed the mutation forms and a letter **dated 14 September 2015** written by the District Surveyor Bureti, addressed to the Deputy Registrar of this Court, stating that he has implemented the consent order in the presence of the plaintiff, defendant, area Chief, Assistant Chief, and security detail.

The defendant has filed a replying affidavit to oppose the motion. He has inter alia stated that it is not true that he has refused to sign the transfer documents. He has averred that his input is paramount in determining the results of the survey and any access roads. He has stated that the parties have not fully agreed on how the land should be subdivided and the mutation is one sided. He has deposed that their parents had allocated to them where they should reside but the plaintiff is conducting the subdivision contrary to these wishes. He has stated that his portion will be affected by a road reserve and that there is

a pending dispute over the road of access between the **parcels number Kericho/Cheborge/52** and **Kericho/Cheborge/51**. His view is that this dispute needs to be resolved first before any subdivision may be done.

I have considered the matter. So that the issue is resolved once and for all, I think it is best that each party proposes how the subdivision should be done and tables the same to court. I direct that this be done within 30 days. I will then look at these and have the input of the District Surveyor and I shall determine once and for all, how best the land should be demarcated.

The costs of this application shall abide my outcome after hearing all parties.

It is so ordered.

Dated, Signed and delivered on this 8th day of April, 2016

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

PRESENT

Mr Joshua Mutai holding brief for Mr Obondo Koko for the Defendant/Respondent.

No Appearance on the part of M/s Tengekyon & Koske Advocates for the Plaintiff/Applicant.