



**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**

**JUDGMENT**

***(Parties agreeing by consent to subdivide land amongst themselves but failing to agree on the mode of subdivision; judgment issued on the manner the land should be subdivided)***

The plaintiff and defendant are brothers being the sons of one Philip Kibii Langat (deceased). The deceased owned a **land parcel Kericho/Cheborge/52** (the suit land) and upon his demise, the plaintiff and defendant filed a succession cause which resulted in the suit land vesting jointly in the names of the plaintiff and defendant in equal shares. In the year 2012, the two parties desired to divide the suit land into two, so that each can become registered proprietor of their half share. They applied to the Kapkatet Land Control Board for consent to subdivide, which consent was given. What prompted the plaintiff to file this suit on **8 July 2013**, was the complaint that the defendant has unreasonably refused to execute the requisite documents required to subdivide the land and transfer the one half portion to the plaintiff. In the suit, the plaintiff sought for orders to have the defendant execute all requisite documents and in default the Deputy Registrar of this Court to proceed and execute them.

On **23 July 2015**, the parties entered into a consent vide which they agreed to have the Bureti District Surveyor, proceed to survey and partition the suit land into two equal portions as will be indicated by the parties. Despite the consent, the plaintiff on **23 February 2016**, filed an application through which he complained that the defendant has refused to comply with the terms of the consent entered into on **23 July 2015**, by failing to execute the transfer forms, although the District Surveyor had prepared a mutation form dividing the land into two equal portions. The defendant filed a reply vide which he explained that he could not sign the transfer forms for the reason that he was not agreeable to the mutation prepared by the District Surveyor.

Having heard from the defendant, I directed him to file his proposed subdivision of the suit land, which he did. I heard from both counsels for the plaintiff and defendant, and also from the District Surveyor. I note that the proposed mutation of the defendant is not very different from that of the plaintiff and District Surveyor. The defendant however appears to have taken into account what he believes will be an expansion of a road that abuts the suit land. I think the defendant is mistaken in adding to his land a road reserve which does not exist. It was stated that the County Government of Kericho is expanding roads beyond the current road reserves existing in the Registry Index Maps and so the land of the defendant will be interfered with. The argument of the defendant is misplaced, since the County Government can only utilize as a road, what exists in the Registry Index Map. If the County would wish to increase the road reserve, then the defendant will have to be compensated, for this will be a compulsory acquisition of private land. It was also claimed that there was a boundary dispute with the neighbouring land but no evidence of such was tendered.

I think the District Surveyor did a fantastic job in mapping the best way to subdivide the land between the plaintiff and defendant. Having heard both plaintiff and defendant on their proposed subdivisions, I uphold the proposal by the District Surveyor which the plaintiff is agreeable to.

I therefore enter judgment for the plaintiff and make an order that the **land parcel Kericho/Cheborge/52**

be subdivided in the manner proposed by the District Surveyor. The defendant is hereby ordered to execute all requisite documents within 21 days from today and in default the documents be executed by the Deputy Registrar of this court.

The parties had earlier agreed in their consent of **23 July 2015**, that each party will bear his own costs. That will remain the position.

It is so ordered.

**Dated, Signed and delivered on this 1<sup>st</sup> day of July, 2016**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**PRESENT:**

Mr. Caleb Koech holding brief for Mr. Koske for plaintiff.

Mr. Obondo Koko present for defendant.